DIGEST

OF

MARTIN'S REPORTS,

OF THE

DECISIONS OF THE SUPREME COURT

OF

THE STATE OF LOUISIANA,

FROM ITS

ESTABLISHMENT IN THE YEAR 1813, TO AUGUST, 1826.

INCLUDING THOSE OF

THE SUPERIOR COURT

OF

THE LATE TERRITORY OF ORLEANS.

BY WILLIAM GERISTY, ATTORNEY AND COUNSELLOR AT LAW.

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PRINTED BY LYMAN & BRARDSLEE.

1826

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THE LATE TERRITORY OF ORLEANS.

AN WIGHTAM CHRISTS, THOUSEN AND COOK ELLON AT LAN

> > 1826

TO THE

Honorable GEORGE MATHEWS,

Honorable FRANCOIS-XAVIER MARTIN,

Honorable ALEXANDER PORTER,

JUDGES OF THE SUPREME COURT

OF

THE STATE OF LOUISIANA,
THIS WORK IS RESPECTFULLY
DEDICATED,

BI

Their most obedient

Humble Gervant,

WM. CHRISTY.

New-Orleans, December, 1826.

182796 6018 7 WE the undersigned, have examined the Digest of Judge Martin's Reports, published by William Christy, Esq. We think it has been well executed; and will be a very convenient and useful work for the Judiciary of the State, and gentlemen of the bar.

New-Orleans, January 7th, 1827.

(SIGNED)

P. DERBIGNY, (Secretary of State.)
ISAAC T. PRESTON, (Attorney Gen.)
JAMES PITOT, (Parish Judge.)

A. HENNEN,

S. MAZUREAU,

T. F. M'CALEB,

H. CARLETON,

(Attorneys at law.)

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The object of this Digest is, to facilitate the researches of professional gentlemen, and to present to the public in the most simple and condensed form, the points of law which have been decided by the highest tribunals of the State of Louisiana and the late territory of Orleans.

The subjects are arranged in alphabetical order, to which are added an index and table of cases, the rules of the Supreme Court, &c.

Where the same point has been several times decided, a reference is made to all the cases in which it arose, without repeating it.

In some instances when an established principle has been invoked as the basis of a posterior decision, the cases containing such principle have been referred to under the latter decision.

The Editor hopes that, this work may prove useful to his professional brethren, and to his fellow citizens generally.

New-Orleans, December, 1826.

RULES OF THE SUPREME COURT.

1. The original plff in the inferior court, shall have the right of opening and closing the argument of the cause in this court.

2. It is ordered that, the party applying for the filing of the record of any case in this court, shall, at the same time, tender to the clerk his bond and security, in the sum of one hundred dollars, for the payment of the fees which shall accrue to said clerk in such suit.

3 It is ordered that, when a cause shall have been set for hearing, and the appellant shall fail to attend himself, or his counsel, the appeal shall be dismissed, unless the appellee shall appear and proceed to argue the case ex parte. But, the cause shall be reinstated, if the party shall within ten days shew that his absence was occasioned by some occurrence not within his control.

4. When the appellant does not rely (wholly, or in part) on a statement of facts, bill of exceptions, or special verdict; but expects to shew error on the face of the record; he shall file an assignment of errors within ten days after the record is brought up—otherwise the appeal will be dismissed.

5. The meeting of this court in the month of November next, shall be on the first Monday, and so on the fourth Monday of November, in every year thereafter.

6. It is hereby ordered that, any party, appellee, having been duly cited to be and appear in this court, shall be allowed five clear days from the day of filing of the appeal, to answer thereto; and, if the said appellee shall not answer thereto, within that period, the cause may be set for trial by the appellant; and this court will proceed to hear the said cause ex parte, at the time appointed for the trial thereof.*

7. Ordered that, whenever a cause is to be argued in writing, the plff's attorney shall deliver to the deft's a copy of his argument, who shall be bound to return it in ten days, with his answer; and the plff ten days after receiving the same, shall deliver the whole, with his reply, to the clerk of the court, or one of the judges. And, if in such reply he shall quote new authorities, he shall be bound to furnish the deft's attorney with a

note of such authorities, and of the point to which he thinks they apply. And that there may be no altercation relative to the time of delivering the copies of such arguments: it is ordered that, no evidence thereof shall be received, but the acknowledgment of the delivery, under the hand of the party to whom the argument was given; or, if refused, by allidavit of that fact.

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And, it is further ordered that, if any party shall delay to deliver his argument within the time above limited, the other may deliver his notes to the court, who will then proceed to examine and decide the cause: Provided that, in all cases, the court may, under special circumstances, enlarge the time for delivery and return of arguments, if such enlargement be applied for before the expiration of the time herein limited.

8. No case shall be set down for hearing, unless the party moving to have it set down, shall on, or before, the preceding Saturday, have filed with the clerk, a note of the points and authorities on which he intends to rely. It shall also be the duty of the opposite party, to furnish to the clerk within three days after the cause is thus fixed for trial, a statement of the points made by him, and the authorities by which he intends to support them, and no re-hearing shall be granted on any points which the parties may have omitted to furnish in compliance with this rule.

When a petition for rehearing is presented, the court, if it doubt whether it ought to be granted, will communicate the petition to the opposite party, who shall be bound to answer within eight days, or the court will proceed to decide on it ex parts.

3. Ordered that, the rule of this court relative to the filing of notes of the points and authorities in each case set down for hearing, shall, from and after the seventh day of October, be amended, by substituting in place of these words, "and no re-hearing shall be granted on any points which the parties may have omitted to furnish in compliance with this rule;" to wit: And if any point, not stated in the note of any party, shall be made by him at the trial, the opposite party shall be allowed, if he desire it, four days to answer such point in writing.

10. The clerk is not to permit any attorney to take any part of the records of this court, even with the consent of the opposite party.

JUDGES OF THE SUPERIOR COURT OF THE LATE TERRITORY OF ORLEANS.

In the beginning of the fall term of 1809, the Judges were,

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Honorable George Mathews.

Honorable Joshua Lewis.

Honorable JOHN THOMPSON.

In the month of February, 1810, Judge THOMPSON died; and on the 21st March, following, the Honorable Francois Xavier Martin, then Judgeof the Mississippi Territory, was appointed in his stead.

JUDGES OF THE SUPREME COURT OF THE STATE OF LOUISIANA, FROM ITS ESTABLISHMENT TO THE PRESENT TIME.

By the Schedule of the Constitution, the Judges of the Inte Territory were made Judges of the Supreme Court, until re-appointed.

On the organization of the State Judiciary, the following gentlemen were appointed Judges of the Supreme Court :

Honorable DOMINICK AUGUSTUS HALL.

Honorable George MATHEWS.

Honorable PIERRE DERBIGNY.

On the 3d July, 1813, Judge Hall resigned his seat, having been appointed Judge of the United States District Court for the Louisiana District; and on the 1st February, 1815, the Honorable Francois XAVIER MARTIN, was appointed in his stead.

On the 15th December, 1820, Judge Dereigner resigned his seat, and on the 2d January, 1821, the Honorable ALEXANDER PORTER was appointed in his stead: since which there has been no change of Judges. so that the Court is now composed of, the

Honorable George Mathews, Presiding Judge,

Honorable Francois X. Martin, Associate Judges.

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ABATEMENT.

- 1. When a cause has been nine years at issue, it is too late for the defendant to plead in abatement. Lafon's Executors vs. Mad. Riviere, Executrix of J. B. Riviere, i. n. s. 130.
- 2. If a plea in abatement with the general issue be not decided by the court below, nor urged by the counsel, the supreme court will not notice it. Duncan and al. Syndies, vs. Bechtel, vi. 510.
- 3. Plea in abatement sustained, when it appears by the pleadings, that the sum due is under that which gives jurisdiction. Bayon vs. Rivet, ii. 150. Lefevre vs. Broussard. Ibid. 136.
- 4. A defendant who does not plead in abatement, admits that his residence and that of the plaintiff are correctly stated in the petition. Crouse vs. Duffield, xii. 530.

Vide ATTORNEYS, 9. PRACTICE, 25, 97.

ABORTION.

1. The law of the recopilacion requiring as a legal presumption of a child not being abortive, that he should live four and twenty hours, is still in force.* Cottin vs. Cottin, v. 93.

Vide CLERKS OF COURT, 4.

ABSENTEE.

1. When a person owning property in this state does not appear for five years, at the place of his residence, and has not been heard of during that time, his presumptive heirs may cause themselves to be put into provisional possession of his estate, and enjoy a portion of the revenue. Westover and al. vs. Aime and Wife, xi. 443.

2. Their right yields to that of the testamentary heirs, and those of both to that of husband or wife. Ibid.

3. The law gives a mortgage on the estate of those who intermeddle with the administration of the property of absent persons; but not on that of those who administer under authority from the proprietor. Ward vs. Brandt and al. Syndics, xi. 332.

4. Whether the absent persons here alluded to are not those who are declared absent? Ibid. 430.

Not so by the present laws; if a child live but an instant, it will not be abortive. See new Civil Code, Art. 950.

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ACQUESTS AND GAINS.

1. A clause in a marriage contract by which all the acquests and gains are to go to the survivor in case there be no issue, is legal. Parquin and al. vs. Finch, in a 465.

2. Lands granted by the king of Spain did not enter into the community of acquests and gains. M. & F. Gayoso Delemos vs. Garcia, i. n. s. 325. L. & F. Frique vs. Hopkins and al. iv. n. s. 212.

3. But the improvements made on them, do. L. & F. Frique vs. Hopkins and al. iv. n. s. 212.

Vide COMMUNITY OF GOODS. HUSBAND AND WIFE,

ACTION.

- 1. No action can be maintained on a corrupt bargain.

 Mullhollan vs. Voorhies, iii. n. s. 46.
- 2. An action may be maintained by one who was not a party to a contract which contains a stipulation in his favor. Marigny vs. Remy, iii. n. s. 607. Duchamp and al. vs. Nicholson ii. n. s. 672. Mayor and al. vs. Bailey, v. 321.
- 3. Real actions are those by which a specific thing is demanded whether moveable or immoveable. Marigny vs. Hunt, iii. n. s. 651.
- 4. A suit brought on an attachment bond is not a continuation of the original one, so that the sheriff's return in the former may be amended during the pendency of the latter. Hatton vs. Stillwell and al. x. 91.

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- 5. One suit may be brought on several causes of action, if they be not inconsistent. Crass vs. Richardson, ii. n. s. 323.
- 6. In a possessory action the judgment ought not to pronounce on the title to the premises. Justice vs. Williams, v. 685.
- 7. An action for money laid out and expended, or for money had and received, does not lie against a wrong-doer by the party injured to recover his consequent disbursements on an implied promise of the deft. Foster and always. Dupre, v. 6.

Vide Bonds, 8. Cumulation. Deed, 4. DISTURBANCE. DOMICIL. PRACTICE, 71. QUANTI MINORIS ACTION. RED-HIBITION. SALE. SALVAGE. SATISFACTION. WARRANTY.

ACTS.

I. Acts authentic.

II. Acts under private signature.

I. ACTS AUTHENTIC.

1. A notarial act may be written in the French language. Marigny vs. Johnston's Syndics, iii. n. s. 551. Tilghmut vs. Dias, xii. 691.

II. ACTS UNDER PRIVATE SIGNATURE.

2. A private act requires no authenticity by its being registered. Seymour vs. Cooley, iii. n. s. 396. Mario Louise vs. Couchoix, xi. 243.

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being Marie 3. An act sous seing privé when it appears aliunde that it was executed as it purports, will have effect against third persons from the day of its execution. Doubrera'vs. Grillier's Syndic, ii. n. s. 171.

4. So also where possession has followed its execution. Ibid.

Vide Exceptions. SEIZURE AND SALE-ORDER OF.

ACTS OF ASSEMBLY.

1. When an act of the Legislature revives another which had previously expired, the latter is only in force from the date of the promulgation of the former. Rost vs. Church of St. Francis, iii. n. s. 54.

2. An act of the Legislature cannot effect instruments executed before its passage. Durnford vs. Ayme, iii. n. s. 270.

3. Whether the distinction of public and private acts of the Legislature be known in this state? Louisiana State Bank vs. Flood, iii. n. s. 341.

4. The act incorporating the Louisiana State Bank is a public one. *Ibid.* 242.

5. In the act of 1821, the term "set off" is used synonymously with "compensation." Pierce vs. Millar, iii. n. s. 354.

6. The acts of 1813, requiring the recording of marriage contracts, theretofore passed is not unconstitutional. Dutillet vs. Dutillet's Syndies, iii. n. s. 468.

7. Acts of the Legislature not in force before their promulgation. St. Avid vs. Weimprender, v. 14.

8. If the act which gives jurisdiction to a court be re-

pealed at any time before judgment is pronounced, a judgment grounded on it, is void. Todd vs. Landry, v. 459.

9. So also if it be repealed after judgment below, but

pending the appeal. State vs. Edwards, v. 474.

Vide Banks, 9. Evidence, 162. Interpretation. Laws. Statutes. Taxes.

ADJUDICATION.

- 1. Although a Spanish judgment states, that an adjudication formerly made, exists no longer, the party having neglected to comply with the laws; yet if the court proceed to order a compliance therewith, and issue execution accordingly, the party after compliance will have the benefit of the adjudication. Aubry and Wife vs. Folse and Wife, xi. 306.
- 2. Immoveable property sold by a sheriff, is not transferred by the adjudication: his deed is essential. Dufour vs. Camfranc, xi. 675. Durnford vs. Degruys and al. Syndics, viii. 222.

ADMINISTRATOR.

- 1. One appointed in another state or country, cannot maintain an action in this state. Le Cesne vs. Coltin, ii. n. s. 485.
 - 2. A motion to dismiss his suit, because his letters were

granted in another state, comes too late after a plea on the merits. M'Grew vs. Browder, ii. n. s. 17.

- 3. And in such case he will recover, even when he sues as administrator. Ibid. Hunter and Postlethwait, x. 456.
- 4. An executor may sue on a promissory note given to him in this capacity, even after the expiration of the year; as the promise is to him though for the benefit of the estate. The word executor being no more than descriptive of the plff. Urguhart's Executors vs. Taylor, v. 202.
- 5. The ordinance of the person acting as governor general and intendant of Louisiana in 1804, created a special administrator. Rogers vs. Beiller, iii. 665.
- 6. The office of special administrator is legal, and not abolished. *Ibid*.
- 7. The power of this administrator did not extend to the estate of an inhabitant of the state, although he had not resided two years in New-Orleans. Rogers vs. Smith, v. 359.
- 8. He was not entitled to a commission on property in the possession of the intestate at his death, belonging to other persons. Labatut and al. vs. Rogers vi. 272.
- 9. But when the goods of others were so mixed with those of the deceased, as not to be distinguished without strict examination, the owners being absent, the administrator being bound to take the whole, he was perhaps entitled to some compensation for his trouble and risk. *Ibid.* 274.

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ADMISSION.

- 1. Any admission which it is important to preserve, must be put upon the record. Mitchel vs. Jewel, x. 645.
- 2. Parties' admission to be received in toto. Duplantier vs. Lynd, ii. 102.
- 3. It cannot be divided. Pratt vs. Flower and al. in. n. s. 452.

ADVERTISEMENT.

1. The neglect of the collector of taxes, to advertise a sale of land in a gazette, does not vitiate it. Smeltzer and Wife vs. Routh, v. 698.

AFFINITY.

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1. Is not a ground of recusation of a judge. Poydras vs. Livingston and al. v. 292.

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AGENT.

1. An agent is a competent witness. Robertson vs. Nott, ii. n. s. 122. Pratt vs. Flower and al. Ibid. 333. Butler vs. De Hart, i. n. s. 184.

- 2. The principal cannot recal his approbation of a contract, made by the agent contrary to instructions. Breed-love and al. vs. Wamack, ii. n. s. 181.
- 3. The receipt of part of an estate from an agent by the principal is not evidence of his ratification of a compromise by which a part of the estate was abandoned by the agent. Kilgour vs. Ratcliff's Heirs, ii. n. s. 292.

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- 4. He who undertakes to collect a debt by suit, is bound to issue a ca. sa. if the money cannot otherwise be raised. Flower vs. M. Micken, ii. n. s. 132.
- 5. An agent who receives a bill to present for acceptance or collection, is bound to use the same diligence in giving notice that the holder is. Crawford vs. Louisiana State Bank, i. n. s. 214. Montillet vs. Bank of the United States, i. n. s. 365.
- 6. On his neglect to give notice, he must show that there was no damage. *Ibid*.
 - 7. He may shew want of funds in the drawee's hands. 16.
- 8. The holder of the bill cannot excuse himself from the neglect to give the person who placed it in his hands for collection, notice of acceptance being refused, on the ground that the drawer had no funds in the hands of the drawee. *Ibid.* 706.
- 9. Whether an agent acting gratuitously is responsible for the slightest neglect? Hodge's Heirs vs. Durnford, i. n. s. 125.
- 10. The degree of diligence required of an agent, who receives compensation for the business he transacts, is that which a prudent man pays to his own affairs, what is called in law, ordinary diligence. *Madeira and al.* vs. *Townsley and al.* xii. 365.
 - 11. If the principal sue the purchaser for the price of

goods sold on credit, without authority in the agent to sell otherwise than for cash, the conduct of the agent is thereby approved, and he discharged from responsibility. Surgat vs. Potter al. xii. 365.

12. A deft. has a right to demand proof of the authority of an agent who commences suit against him, and makes affidavit to obtain process of attachment. Shewell vs.

Stone, xii. 386.

13. An agent who purchases land for another, and pays for it with the money of his principal, will be compelled to convey it to him, and parol evidence will be received, to shew that it was so bought and paid for. Hall vs. Sprigg vii. 243.

14. If money be received by the deft's clerk on account of the plff. and it is afterwards stolen from the deft's store, without any circumstances to lessen the latter's responsibility, it must be refunded. Noble vs. M'Micken, ix. 188. Weeks vs. M'Micken, vii. 54.

15. If A. B. and C. receive a note for collection, payable in Tennessee, and promise to send the proceeds to New-York, and they transmit it to D. in Tennessee, with instructions to collect it, and being called on for it by the owner, give him an order for it on D. in Tennessee, he cannot demand the proceeds of said note from A. B. and C. Young vs. M Laughlin and al. vii. 628.

16. If the agent evidently meant a voyage to a certain place, and the principal one to another, their error prevents any contract of mandate from taking place. Ter-

ril and al. vs. Flower and al. vi. 583.

17. The act of the principal ratifying that of the agent is to be liberally construed. Terril and al. vs. Flower and al. vi. 584.

18. If A. give the management of his ship's affairs to B. he will not on that account be bound by a purchase of cotton made by B. long after the ship sailed. Vidal vs. Russell and al. v. 297.

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19. If a commission merchant send an account current, in which a balance appears due from him, which he afterwards pays, he will not be allowed to recover it back, on the ground that he sold his principal's cotton for a bill of exchange, on New-York, which has since returned protested, if he did not before disclose this circumstance; especially, if the principal consigned the cotton for a third party, to whom he has paid the proceeds. Fisk and al. vs. Offit and al. iii. n. s. 553.

20. A charge by a commission merchant of ten per cent. for selling property is an excessive one. *Arnold* vs. *Dean*, iii. n. s. 248.

21. He who contracts to import goods for another must strictly comply with his orders. Ralston vs. Pamar, v. 3.

22. If he has sold goods for another, and has rendered an account, which has been accepted, he cannot afterwards be called upon for the price of any part of them, which remain uncollected. Ryon vs. Gilly and al. vi. 417.

23. If A. buy land for B. he cannot rescind the sale without B's consent. Kemper vs. Smith, iii. 622.

24. He who undertakes, though gratuitously, the business of another, is bound to indemnify the latter, from the consequences of his neglect. Montillet vs. Bank U. S. i. n. s. 365. Hodge's Heirs vs. Durnford. Ibid. 103.

25. An agent who sells goods on credit is not responsible to his principal, until the price be received; unless the sale was made improperly. Bird's Syndic vs. Dix's Estate, iv. n. s. 254.

26. An agent appointed to superintend the sale at auction of an insolvent's estate, cannot become the purchaser thereof. Shepherd vs. Percy, iv. n. s. 267.

27. An authority to purchase merchandize, will not authorize an agent to buy medicine, on partnership account.

Hazard vs. Boyd, iv. n. s. 347.

28. If an agent who is to be paid on condition, that he succeeds in the business entrusted to him, be dismissed without cause, he can claim a sum for his services, equal to the trouble he has been put to. Lanusse's Syndics vs. Pimpienella, iv. n. s. 439.

29. A consignee, who was agent in a purchase, may sell the goods he may have purchased to replace his advances.

Zoit vs. Millaudon, iv. n. s. 470.

30. An agent who acts without authority, does not bind his principal, although the act be done with an intention to benefit him. Ure and al. vs. Currell, iv. n. s. 502.

31. An agent who surrenders a note, belonging to his principal, and takes one payable to himself at a distant day, and delays bringing suit on it at maturity, is chargeable with its amount. Littlejohn vs. Ramsay, iv. n. s. 655.

32. When an agent exceeds his authority, the principal may set the contract aside; but he cannot enforce it according to his instructions to the agent. Findley vs. Breedlove and al. iv. n. s. 105.

33. An agent cannot discharge himself from responsibility on the ground that he acted for another, unless he made that fact known to the parties with whom he contracted. Bedford and al. vs. Jacobs, iv. n. s. 530.

Vide Bills of Exchange and Promissory Notes, 77. Curator, 7. Damages, 6. Factor. Lien. Practice, 6. Substitution. Witness. Attornies. ser

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AGREEMENT.

- 1. A promise to deliver cotton which the obligee is to sell to satisfy a debt due him, is not discharged by his death—he is represented by his heirs. Ferguson and al. vs. Thomas and al. iii. n. s. 76.
- 2. He who stipulates for another, may revoke the stipulation before the other accepts it. Gravier vs. Gravier's Heirs. Gravier's Heirs vs. Gravier. Same vs. Same, iii. n. s. 206.
- 3. A sygnallagmatic agreement may be given in evidence, though not executed double. Oldham vs. Croghan, iii. n. s. 517.
- 4. It is good as a beginning of proof in writing. *Ibid.* 520. *Mayner* vs. *Rollins. Ibid.* 618.
- 5. A fortiori when it is made in duplicate, but the mention of this circumstance being omitted. Mayner vs. Rollins, iii. n. s. 618.
- 6. If an agreement be not obligatory when first entered into, no subsequent law can make it so. White and al. vs. Noland, iii. n. s. 636.
- 7. Agreements are to be construed according to the intention of the parties. Berthoud vs. Barbaroux, iv. n. s. 543. Spraggins vs. White, iii. n. s. 663.
- 8. A sygnallagmatic agreement under private signature, neither made double nor executed, is void. Heriot and al. vs. Broussard, iv. n. s. 260.
- 9. Otherwise, if executed. Simmins, f. m. c. vs. Parker, iv. n. s. 200.
- 10. An agreement to give security for the liquidation of the affairs of a partnership, will not be complied with, by

giving bond with security to pay its debts. Abat vs. Bayon, iv. n. s. 516.

Vide Assignment, 2. Contract.

ALIEN.

1. An alien may inherit lands in this state.* Phillips vs. Rogers and al. v. 700. Rogers vs. Beiller iii. 668.

ALIEN ENEMY.

1. If, after execution issued, the plaintiffs become alien enemies, the court will not interfere on a summary application. Brofield's Heirs vs. Lynd, ii. 213.

2. Alien enemy not heard on a motion to dissolve an injunction. Taylor and Hood vs. Morgan, ii. 263.

ALIENATION.

- 1. A forced one results from a sale made at the time, and in the manner prescribed by law, in virtue of an execution issued on a judgment rendered by a court of competent jurisdiction. *Dufour* vs. *Camfranc*, xi. 607.
- * By an act of the 20th December, 1824, it is provided, that no alien shall be commissioned to any civil or military office.

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2. If a sale be made when these requisites are wanting, the purchaser does not acquire the right, title and interest, which the debtor had in the thing sold. *Ibid.* 607.

3. If proceeds arising from property irregularly sold by the sheriff, have been applied to the payment of the owner's debts, he cannot recover the property until he repays the purchaser the amount of the purchase money. *Ibid.* 608.

4. When the judgment, by virtue of which, immoveable property or slaves is sold by the sheriff, is not recited in the bill of sale given by him, the purchaser does not acquire a right to the property. *Ibid.* 611.

5. When an alienation of property is not expressed in the instrument it must clearly result from the act. *Ibid.* 608.

6. To set aside the alienation, fraud in the alienor, know-ledge in the alienee, an injury to a third party, must be shown. Kenney and al. vs. Dow, x. 577.

Vide SALE.

ALIMONY.

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- 1. A man living with a coloured woman, will be compelled to furnish alimony to his daughter, a white child out of his house. Heno and al. vs. Heno, ix. 643.
- •2. And also to his sons, white boys, if he make them eat with the woman and her coloured children. *Ibid.*
- 3. On a decree for alimony in favour of the wife, a sale of the husband's property will not be ordered, without notice to him. Guidery vs. Guidery, ii. 132.

Vide SEPARATION FROM BED AND BOARD.

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AMBIGUITY.

1. When every thing in an instrument seems right and clear, but the meaning of it is uncertain, the proof of the fact, which may remove the doubt, is admissible. Turnbull vs. Cureton. Cureton vs. Turnbull, ix. 37.

AMENDMENT.

- 1. May be allowed at any stage of the proceedings for the furtherance of justice. Debuys and al. vs. Mollere, ii, n. s. 626. Johnston's Executor vs. Wall and al. i. n. s. 541. Sinnet vs. Mullhollan and al. iii. 398. Aston vs. Morgan, i. 175.
- 2. A district judge cannot modify a former decree at a succeeding term, unless a new trial was regularly granted. Balio vs. Wilson Tutrix, &c. xii. 358.
- 3. After the copy of a judgment has been sent to an inferior court, to be put in execution, the parties are out of the supreme court, and it cannot amend such judgment on motion of the party injured. D'Apremont vs. Peytavin, v. 641.
- 4. A district court cannot amend its judgment after it is signed, and execution issued; and if an appeal be brought on a judgment so amended, a statement of facts made after its original signature will not be legal. Louisiana Bank vs. Hampton, iv. 94.
 - 5. On an amendment of a petition by inserting the place

of residence of the plff. the deft. not entitled to time to answer. Sinnot vs. Mulhollan and al. iii. 398.

- 6. Petition may be amended by praying for a jury.—

 Bertus vs. Harbour, ii. 153.
- 7. Amendment will be allowed when the issue is not thereby changed. Ducournau vs. Morphy, ii. 297.
- 8. A deft. cannot amend his answer, so as to change the substance of the issue joined. Abat vs. Bayon, iv. n.s. 516.
- 9. Amendment suggesting fraud allowed after plea of payment. St. Mark vs. Delarue, ii. 101.
- 10. Amendments will not be allowed when they do not promote the justice of the case. Lawrence vs. Foster, iv. n. s. 423.

Vide PRACTICE, 81 to 85.

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ANSWER.

- 1. The admissions in an answer must be taken altogether. Crummen vs. Cavenah, i. n. s. 532.
- 2. Unless the dest. has expressly claimed a balance due him, in his answer, he cannot have judgment therefor.—
 Couprey's Heirs vs. Dufau, i. n. s. 90.
- 3. The answer of one partner to interrogatories is sufficient, if not accepted to.* Martineau and al. vs. Carr and al. iii. 497.

Vide PRACTICE, 5, 50, 51, 52, 69, 117. SIGNATURE.

^{*} The answer must be in French and English, when the mother tongue of the plaintiff is French. See Gode of Practice, Art. 319.

APPEAL.

I. Who may appeal.

II. Who cannot appeal.

III. When it lies.

IV. When it does not lie.

V. When to be made. Taken

VI. Return-day of.

VII. When to be prosecuted.

VIII. When dismissed.

IX. When it will not be dismissed.

X. Frivolous appeal.

XI. Damages on appeal.

XII. Right of-how determined.

XIII. Whence it lies.

XIV. Appeal generally.

I. WHO MAY APPEAL.

1. Whether the right of appealing from judgments by persons, not parties to them, must be confined to those who had an interest in the matter in dispute at the time judgment was rendered. Day vs. Eastburn and al. xi. 232.

2. After the deft. has appealed, and the judgment thereon has been affirmed, the plff. may also appeal, and have any error to his disadvantage in the opinion in the first instance corrected. *Poeyfarre* vs. *Delor*, vii. 1.

II. WHO CANNOT APPEAL.

3. A party not injured by a judgment cannot appeal from it. Young vs. Cenas and al. i. n. s. 308. Williams vs. Trepagnier and al. iv. n. s. 342.

4. No one can appeal from the decision of a police jury for laying out a road, but the owner of part of the land over which it passes. Vacoune vs. Police Jury, i. n. s. 596.

5. If the Judge find all the issues of fact submitted by a party in his favor, and judgment be entered thereon on his motion, he cannot appeal. Barnwell vs. Harman, Same vs. Kumbel, vi. 722

6. A creditor of a party to a suit, who has not established his claim below, cannot exercise his debtor's right of appeal. Rutherford vs. Cole, v. 217.

7. An appeal will not be granted to a party who has no pecuniary interest. Lafitte vs. Duncan, iv. n. s. 622.

HI. WHEN IT LIES.

- 8. An appeal lies from a judgment of dismissal. Campton and al. vs. Patterson, iii. n. s. 164.
- 9. So from a nonsuit. Chedoteau's Heirs vs. Dominguez, vii. 490. Lefevre vs. Broussard, ii. 135.
- 10. So from the discontinuance of a cause. Syndies of Brandt and al. vs. Shaumburg i. n. s. 698.

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- 11. But the appellant in such a case must shew that he opposed the discontinuance, and the grounds of his opposition. *Ibid. Ibid.*
- 12. So from interlocutory judgments, when they work an irreparable injury. Chetodeau's Heirs vs. Dominguez, vii. 520.
- 13. So from an order of seizure and sale. Gurlie and al. vs. Coquet, iii. n. s. 498. Tilghman vs. Dias, xii. 691.
- 14. So, frequently, from the denial of a right claimed, when the grant of it would not. Bargebur and al. vs. Their Creditors, ii. n. s. 708.
 - 15. So from an order revoking the appointment of an

attorney for absent heirs. Seghers, Att'y for absent Heirs vs. Antheman, Ex. of C. Andre, f. w. c. i. n. s. 84. State vs. Judge Pitot, xii. 485.

16. So when the amount claimed is \$300 and interest.

Marie Bergel, f. w. c. vs. Langlais, i. n. s. 138.

17. So from a judgment which produces an irreparable injury. Seghers, Att'y for absent Heirs vs. Antheman, Ex. of C. Andre, f. w. c. i. n. s. 73.

18. So from a decree admitting a will to probate. Ib. Ib.

19. So when the matter in dispute exceeds three hundred dollars. State vs. Knight, i. n. s. 701.

20. So if a suit be for damages, and an injunction to quiet, &c. though less than three hundred dollars be claimed for damages, if the property seized be worth more than three hundred dollars. Kemper vs. Armstrong and al. xii. 296.

21. So from the discharge of a rule on the sheriff, to shew cause why he does not release attached property.—

Lecesne vs. Cottin, x. 174.

22. So from the discharge of a rule on syndic, to produce his bank book. Canfield and al. vs. Walton's Syndics, ix. 189.

23. So from the discharge of a person arrested for want of bail. State vs. Judge Lewis, ix. 302.

24. So from the discharge of a writ of sequestration.— *Ibid.* 301.

25. So from a refusal to grant a new trial. Hatch vs. Gillet, viii. 169. Sorrel vs. St. Julien, iv. 508.

26. In such case it is useless to take a bill of exceptions to the opinion of the court, refusing to grant the new trial.

Muse vs. Curtis and al. viii. 720.

27. So from a judgment obtained by the state. State vs. Montagut and al. vii. 448.

28. So when a motion to inhibit a sale be overruled.—
State vs. Judge Lewis, vii. 457.

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29. So from the recusation of a judge, if it be improperly sustained. Poydras vs. Livingston and al. v. 292.

30. So from a decree confirming the nomination of a syndic. Enet vs. His Creditors, iv. 307.

31. So from the improper denial of a continuance.—

Broussard vs. Trahan's Heirs, iv. 489.

32. So from an order quashing an execution. Prampin vs. Andry, iv. 314.

33. So from the discharge of a garnishee from his bond. Laverty vs. Anderson, iv. 606.

34. So from the reversal of an order for the meeting of creditors. Harper vs. His Creditors, iii. 322.

35. So from an order maintaining an injunction. Riley vs. Lynd, iii. 228.

IV. WHEN IT DOES NOT LIE.

36. No appeal lies from an order to transfer a cause.—
Todd and al. vs. Andrews, iii. n. s. 25. Kelly vs. Breedlove
and al. ix. 492. Agnes vs. Judice, iii. 182.

37. Nor from an order on a syndic to produce his bank book. Bargebur and al. vs. Their Creditors, ii. n. s. 496.

38. Nor when the defendant pleads a set-off, which, added to the plaintiff's claim, make an aggregate of more than three hundred dollars, although accounts to a larger amount were investigated on the trial. Breedlove and al. vs. Young, ii. n. s. 314. Dame vs. Gass, xi. 205. Mercier vs. Packwood, iv. 33.

39. Nor from the continuance of a cause. Compton and al. vs. Patterson, i. n. s. 597. Las Caygas vs. Larionda's Syndies, iv. 605.

- 40. Nor from a judgment not signed. Belanger vs. Gravier, i. n. s. 89. Fortier vs. Randolph, xi. 275. Shaumburg and al. vs. Torry and al. Syndies, x. 179. Turpin vs. His Creditors, ix. 518.
- 41. Nor from a quo warranto to a justice of the peace to ascertain whether or not he has jurisdiction of a cause. State vs. Knight, i. n. s. 700.
- 42. Nor from a judgment granting a new trial. Dresser vs. Cox, xii. 536.
- 43. Nor when two years have expired after the rendition of a final judgment in the inferior court.* Day vs. Eastburn and al. xi. 232.
- 44. Nor from an order setting a judgment by default aside, and continuing the cause. Fortin vs. Randolph, xi. 268. Ralph and al. vs. F. L. Claiborne, ii. 176.
- 45. Nor from refusal to receive a supplemental petition. Penrice vs. Crothwaite and al. xi. 537.
- 46. Nor when there is but mere delay in the decision of a cause. Ibid: 268.
- 47. Nor from an order for a special jury. Hawkins vs. Livingston, x. 443.
- 48. Nor for an insolvent on judgment, homologating the proceedings of his creditors. Seghers vs. His Creditors, viii. 136.
- 49. Nor from an order submitting accounts to referees.

 Davis vs. Preval, vi. 422.
- 50. Nor from an order of a court of probates, granting three months to the curator of a vacant estate to account, and directing that on his failure so to do, his bond should be put in suit. Dennis vs. Cordeviella, iv. 654.

^{*} See Code of Practice, Art. 593. One year is now allowed from final judgment, except minors are concerned, or the appellant reside out of the state.

- 51. Nor from a judgment of the superior court of the late territory of Orleans to the supreme court. Bermudez vs. Ibanez, iii. 2.
- 52. Nor from refusal to grant a new trial on a judgment rendered by the superior court of the late territory of Orleans, although the case was transferred to the present district court. Syndics of Brooks vs. Weyman, iii. 16.
- 53. Nor from refusal to discharge bail on motion.—
 Fortier vs. Declouet, iii. 17.
 - 54. Nor in criminal cases. Ogden vs. Blackman, iii. 305.
- 55. Nor from proceedings in an habeas corpus. Laverty vs. Duplessis, iii. 42.
- 56. Nor from an order refusing a special jury. Labatut vs. Puche, iii. 325.
- 57. Nor from a judgment against a sheriff for having taken insufficient bail, when less than three hundred dollars is claimed from him, although a greater sum was demanded from the deft. in the original suit. Richard and al. vs. Morgan, iv. n. s. 89.
- 58. Nor from an order homologating an inventory; for relief may be given after final judgment. Rieffel and al. vs. Soissiere, iv. n. s. 366.
- 59. Nor from a decision refusing to sustain exceptions to a petition—being premature. Spencer vs. Lumbert, iv. n.s. 366.

V. WHEN TO BE TAKEN.

- 60. The ten days allowed to appeal in, do not begin to run, till notice of the judgment be served. Turpin vs. His Creditors, ix. 517.
- 61. Party prevented by accident, timely to pray for an appeal—relieved. Emerson vs. Lozano, i. 265.

VI. RETURN-DAY OF.

62. If an improper return day for the appeal be fixed by the judge a quo, an appearance and joinder in error, cures the defect. M. & F. Gayoso De Lemos vs. Garcia, i. n. s. 324.

VII. WHEN TO BE PRESENTED.

63. By the former laws of this state, only one year was allowed after the filing of the papers in the appellate tribunal, to prosecute the appeal to judgment. Mayor and al. vs. Gravier, xi. 621.

64. And after the expiration of that time, if the appellant did not shew good cause for the delay, the judgment

passed in rem judicatam. Ibid.

65. By Spanish laws, were to be prosecuted within forty days, and it was necessary for the appellant, within that time, to present to the judge a quo, the necessary certificate from the court of appeals.* Le Blanc and al. vs. Croizet, iv. 281.

VIII. WHEN DISMISSED.

- 66. If no bond be given. Davis vs. Curtis, iii. n. s. 142.
- **67. If the record show the amount claimed to be less than three hundred dollars. Dame vs. Gass, xi. 205. Mercier vs. Packwood, iv 33.
- 68. If the record be not filed on the return day. Munson vs. Cage, i. n. s. 573. Offut's Heirs vs. Roberts, i. n. s. 573. Carpentier vs. Harrod and al. xi. 433. Horn vs. Montgomery, xii. 505. Lafon's Executors vs. Riviere, xii. 506.

^{*} By the present laws, there is no time fixed in which appeals shall be prosecuted.

69. If there be no statement of facts, special verdict or bill of exceptions. Mayhew vs. Paxton, i. n. s. 364. Allard vs. Ganusheau, iv. 384. Brow vs. Herman, Ibid, Ibid.—Broussard vs. Trahan's Heirs, Ibid. 516. Fromentin and al. vs. Prieur, iii. 215. Taylor vs. Porter, iii. 423. Harrison vs. Mager and al. iii. 397.

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70. If taken from an order refusing to permit the plff. to make a voluntary surrender, when the record shews that his creditors had obtained an order for a forced surrender, though it does not shew how far they had proceeded therein. Blossman vs. His Creditors, xii. 28.

71. If there be a bill of exceptions to the final judgment, but no statement of facts. Fergurson and al. vs. Bacon, xii. 303.

72. If the record be made up in so confused a manufic that the court cannot clearly see the facts of the case, and there appear to be four judgments and only one statement of facts. Sompeyrac vs. Cable, xii. 431.

73. If the judge a quo cannot certify the record in positive terms. Girod vs. Perroneau's Heirs, xi. 552. Same vs. Same, Ibid. 1. Wood and al. vs. Lewis, i. n. s. 595.

74. If the statement of facts be so imperfect that the court cannot discover from it the merits of the case.—
Smith vs. Kemper, vi. 563.

75. If the appellant does not appear. Brown and Wife vs. Parish Judge, iii. 424.

76. If the certificate of a clerk, that he has given a true transcript of the record, does not enable the supreme court to examine the facts of the case, the record containing no statement of facts by the judge, nor any evidence recorded by the clerk, nor a certificate that the cause was tried on written documents, or on a case agreed to, nor bill of exceptions. Burch vs. Chew, ii. n. s. 67. Mou-

lon vs. Brandt and al. Syndies, x. 669. Dubreuil vs. Dubreuil, v. 80. Longer and al. vs. Pugean, iii. 221. Syndies of Hellis vs. Asselvo, iii. 201. Wiltz vs. Dufau and al. x. 20.

IX. WHEN IT WILL NOT BE DISMISSED.

77. It will not be dismissed, because the judge a quo has certified that the statement of facts which he made contains a note of the evidence: the court will presume that he meant the evidence. Dromgoole vs. Gardner's Widow and Heirs, x. 433.

78. Nor because the authority of the person who signed the bonds for the principal, does not appear on the record. Delisle vs. Gaines, iv. 666.

X. FRIVOLOUS APPEAL.

79. Not allowed to be dismissed by appellant to avoid the payment of damages. Shannon vs. Barnwell and al. iv. 35.

80. If there be no bill of exceptions, and the appellant do not bring the case before the supreme court, in such a manner as to enable it to examine the merits, the judgment of the court below will be affirmed with damages. Hunter vs. Abert, ii. n. s. 328.

XI. DAMAGES ON APPEAL.

I. When given.

II. When not given.

1. WHEN GIVEN.

81. Given on a frivolous appeal. Arnold vs. Dean iii. n. s. 248. Butler vs. Kenner and al. Ibid. 257. Rogers and al. vs. M'Crummen, i.n. s. 576. Mullhollan vs. Same. Ibid. 575.

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Mollan and al. vs. Same. Ibid. 576. Baldwin vs. Taylor. Ib. 598. Yeiser vs. Smith, xii. 294. Ferguson & Rich vs. Robt. Martin, xii. 295. Wooters vs. Wilkinson, Ibid. 491. Johnson vs. Turner and al. Ibid. 492. Serpentine vs. Slocum. Ib. 395. Day vs. Bookter, x. 201. Dussuau and al. vs. Dussyau and al. viii. 164.

82. So for delay. Yeiser vs. Smith, xii. 292. Ferguson & Rich vs. Robert Martin, Ibid. 295. Stephens vs. Smith, Ibid. 333. Dussuau and al. vs. Dussuau and al. viii. 164. Shanon vs. Barnwell and al. iv. 35. Clark vs. Parham, iii. 405.

83. So, also, if the appellant does not bring up the case in such a manner, as to enable the court to examine its merits. Hunter vs. Abert, ii. n. s. 328.

II. WHEN NOT GIVEN.

84. If judgment be amended in favor of the appelled, damages cannot be awarded against the appellant for a frivolous appeal. Deblieux vs. Darbonneaux, ii. n. s. 217.

85. Nor, if appellant appear to have been under error. Mayor and al. vs. Davis, iv. 533.

86. If the record does not shew the facts of the case, and that the appeal was taken for delay only, damages cannot be given. Stringer vs. Duncan and al. vii. 359.*

87. When the testimony is contradictory, the appellant is not to be mulcted in damages. Troppe and al. vs. Bayon, iv. n. s. 618.

XII. RIGHT OF APPEAL—HOW DETERMINED.

88. By the amount demanded, not that recovered. Harang vs. Dauphin, iv. 27. Same vs. Same, iii. 640.

^{*} Overruled—see point 82, under this general head—and xii. 294. The case of Veiser vs. Smith.

XIII. WHENCE IT LIES.

89. To the district court, and from thence to the supreme court, on the appointment of a curator to a vacant estate.* Rust vs. Randolph, iv. 370.

90. On such an appeal the district court ought to try the cause de novo. Ibid. Ibid.

XIV. APPEAL GENERALLY.

91. What is related in the opinion of the judge a quo, cannot be received as evidence on the appeal. Blossman vs. His Creditors, xii. 28. Kay and al. vs. Compton. Ibid. 309. Lombard vs. Guilliet and Wife, xi. 453. Longer and al. vs. Pugeau, iii. 221.

92. Under the Spanish laws, when the appeal did not suspend execution, it was not necessary to cite the party in the inferior court to shew cause why its judgment should not be executed. Mayor, &c. of New-Orleans vs. Gravier, xi. 620. Le Blanc and al. vs. Croizet, iv. 272.

93. When parol evidence is taken down in open court, it cannot be used on appeal, without a statement of facts agreed on between the parties, or on failure thereof by the judge. Wiltz vs. Dufau and al. x. 20.

94. If an appeal be dismissed by consent, proceedings are to be had below, as though none had been taken, Clark's Executors vs. Farrar, iii. 212.

95. An appeal will be summarily tried, if the word "defence" be not endorsed. Polk vs. Duplantier, ii. 114.

* All appeals from the probate courts in the first district, are taken directly to the supreme court. See the Acts of the 22d February, 1817, 18th March, 1820, and 19th February, 1825; relative to probate courts.

96. If an appeal be abandoned, execution cannot issue from the court above. Mollere vs. Bayon, ii. 144.

Vide APPELLANT AND APPELLEE. CITATION, 8, 10, 13, 14. Supreme Court. Evidence, 98. Judgment. Surety. Practice. Bonds.

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APPELLANT AND APPELLEE.

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1. An appellant admits, by appealing, that the judgment is final. Breed vs. Repshere and al. iv. 187.

2. Whether the appellee may be relieved in the supreme court? Sauzeneau vs. Delacroix and al. v. 386.

3. An appellee must confine himself to the general answer in the supreme court, unless he have leave. Chabaud vs. Godwin, ii. 176.

4. If a decision of the judge a quo render the introduction of certain evidence useless, the party will be allowed an opportunity of introducing it, if the decision be held to be erroneous. Bainbridge vs. Clay and al. iii. n. s. 671.

5. If the appellant give bond on an appeal, but does not prosecute it, he cannot on a subsequent one in the same case avail himself of such bond. Lavigne vs. May, ii. n. s. 628.

6. In such case the appellee may have the appeal dismissed, although he did not appear and make the objection on the return day. *Ibid*.

7. If the appellant neglect to bring up the record, and the appellee do so, and the judgment be affirmed, damages will be given. Mulhollan vs. M. Crummin, i. n. s. 575. Rogers and al. vs. Same. Ibid. 576. Mollan and al. vs. Same. Ibid. Hinson and al. vs. Ogden and al. xii. 389.

- 8. If the appellee accept service of the appeal after the return day has expired, he waives his right to have it dismissed. Vecche vs. Grayson, i. n. s. 133.
- 9. An appellant, who appeals from a part of a judgment, cannot urge any other point in the supreme court. Penrice vs. Crothwaite and al. xi. 537.
- 10. The appellant must in all cases give security for costs. Dubreuil vs. Debreuil, v. 81.
- 11. The appellee cannot bring up the transcript of the record.* Carson vs. Wallace, v. 219.
- 12. If the parties agree that a statement of facts be made by the judge, and he decline doing so, having lost his notes and forgotten the facts, the appellant will be relieved by the grant of a new trial. *Porter vs. Dugat*, ix. 92.
- 13. The appellant may bring up either the original petition of appeal, or a copy. Louisiana State Bank vs. Morgan and al. iv. n. s. 344.

Vide Bonds, 21, 22. CITATION, 8. EVIDENCE, 98.

* APPRAISORS.

1. Cannot appoint an umpire by lot. Bermudez vs. Ibanez, ii. 317.

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^{*} Overruled—see point 7, under this head, and the act of 1st March, 1822, amending the several acts, regulating the practice of the supreme court. Also, Code of Practice, the head "Appeal and Statement of Facts," commencing at Art. 564; and head "Proceedings in the Supreme Court," commencing at Art. 874.

APPRENTICE.

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nt U- 1. The master may correct his apprentice, but not in a wanton or cruel manner. Mitchell vs. Armitage. x. 38.

ARBITRATORS:

- 1. Who have not reported within the time fixed by the court, may be re-appointed. Lafon's Executors vs. Mad. Riviere, Executors of J. B. Riviere, i. n. s. 130.
- 2. It is not a good objection to an arbitrator appointed by rule of court, that he has already acted as such, and has made some progress in investigating the matter—lbid. lbid.
- 3. Whether those appointed by the court may give their award at any time during the pendency of the suit? Lafon vs. Riviere, vi. 1.
- 4. Arbitrators must be sworn. Harrod and al. vs. Lewis and al. iii. 312.
- 5. The time of the meeting of arbitrators may be shewn by parol evidence. *Porter* vs. *Dugat*, xii. 245.

Vide AWARD, 1. REFERENS.

ARRAY.

1. It is not a good cause of challenge to the array, that

forty-nine jurors were drawn and put on the venire, instead of forty-eight. Debuys and al. vs. Mollere, ii. n. s. 625. Remos vs. Bringier, Ibid. 192.

2. A challenge to the poll of the individuals improperly drawn, is the legal remedy in such case. *Ibid. Ibid.*

Vide JURY.

ARREST.

1. Made on presumption of intended departure, arising from a suspicious disposal of property.* Hudon's Case, ii. 172.

ASSIGNMENT.

1. If debts be assigned as collateral security by public act, the assignee is not obliged to use the same diligence as the endorsee of negotiable paper; but he is bound to use the same diligence that is required from an agent.—

Johnson and al. vs. Sterling, iii. n. s. 483.

2. An agreement that the expenses of collection shall be borne by the assignor, does not authorize the assignee

to charge for his services. Idid. Ibid.

3. The assignee of a debt not negotiable, may sue in his own name. Kilgour vs. Ratcliff's Heirs, ii. n. s. 296.

^{*} Article 207 of the Code of Practice reads thus —"No citation can issue, no demand can be made, no proceedings had, nor suits instituted, on Sundays, on the 4th of July, or on the 8th of January of every year. Nor shall any arrest be made after sun set on any individual within his domicil."

4. An assignee of a debt in suit may claim the benefit of a judgment rendered after the assignment. Ibid. Ibid.

5. The service on the debtor of a copy of the assignment, is not essentially requisite to vest the debt in the assignee: notice to the former suffices. Tours vs. Cushing, i. n. s. 425. Gray vs. Trafton and al. xii. 702.

6. No particular form or specific instrument in writing is required in the assignment or transfer of debts. Gray vs. Trafton and al. xii. 702.

7. It may as well be done by giving an order on the debtor to pay the assignee, as by giving up the evidence of the debt, *Ibid. Ibid.*

8. If goods be assigned, proof of the tradition or delivery is necessary. Fisk vs. Chandler, vii. 24. Norris vs. Mumford, iv. 20.

9. Assignment of goods by a person about to remove from the state, leaving debts therein, made for the purpose of providing for the payment of freight, duties and other charges thereon, and to secure one, who became bail for the assignor, is valid. Woodward and al. vs. Braynard and al. vi. 576.

10. An assignee may sue in his own name. Sedwell's Assignee vs. Moore, x. 117.

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11. The creditor of an assignor may seize the debt assigned at any time before the assignee gives notice of the assignment to the debtor. Bainbridge vs. Clay, iv. n. s. 56.

Vide ATTACHMENT, 29. MORTGAGES, 24. SEIZURE AND SALE—ORDER OF. DEBTOR AND CREDITOR.

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ATTACHMENT.

I. Attachment generally.

II. When it lies.

III. When it does not lie.

IV. Against whom it lies.

V. Against whom it does not lie.

VI. What may be attached.

VII. What cannot be attached.

VIII. Of the affidavit to obtain it.

IX. Motion to dissolve.

L ATTACHMENT GENERALLY.

1. A creditor of this state may attach the property of his debtor after a sale which is not perfected by delivery, although a different rule should prevail in the country of the domicil of the debtor. Olivier vs. Townes, ii. n. s. 93. M. Neil and al. vs. Glass and al. i. n. s. 261. Peabody and al. vs. Carrol, ix. 295. Norris vs. Mumford, iv. 20. Durnford vs. Syndies of Brooks, iii. 222.

2. The defendant may shew, that the property attached, is not his. Schlatter and al. vs. Broaddus and al. iii. n. s. 321. Woodward and al. vs. Braynard and al. vi. 572.

3. If the deft, is not properly before the court, there can be no judgment rendered between the plff, and garnishee, Mackee and al. vs. Cairnes and al. ii. n. s. 599.

4. Monies, rights and credits, may be released from attachment, by being bonded. Lecesne vs. Cottin, x. 176 and 177.

5. The want of a citation in the mode prescribed by law, is a fatal objection to proceeding by attachment. Stockton and al. vs. Hashick and al. x. 472.

6. Property attached cannot be mortgaged by the debtor, so as to destroy the lien of the attaching creditor. Harvey vs. Grymes and al. viii. 395.

7. When the petition concludes with a prayer for the attachment of a specific debt, nothing else can be seized. Astor vs. Winter, viii. 170.

8. It is sufficient to place the property attached, in the custody of the law, that it be attached in the hands of the garnishee. Scholefield and al. vs. Bradlee, viii. 495.

9. After a general denial, the deft. cannot shew, that the property attached is not his. *Tappan and al.* vs. *Brierly*, vii. 453.

10. If the agent of A. real or pretended, draw bills on him, which are endorsed and sold by B. who, with the proceeds, purchases and ships a cargo, for the account and risk of A. which A. declines receiving, denying the authority of the drawer, and suffer the bills to be protested, and afterwards a third person sells the cargo, for the account and risk of the owners of the outward one, and B. after paying the protested bills, receive the return cargo, it cannot be attached by a creditor of A. Harrod and al. vs. Glennie and al. vi. 685.

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11. If it appears that the property attached, does not belong to the dest. he is not in court, and there cannot be any proceedings against him. Woodward and al. vs. Braynard and al. vi. 572.

12. An attachment cannot be quashed, on an inquiry into the merits. Smith and al. vs. Elliot and al. iii. 366.

13. On a motion to dissolve an attachment, the debt cannot be disproved. Fisher & Taylor vs. Hood, ii. 113.

14. Proceedings on an attachment, without a citation, are null. Cochran vs. Smith and al. ii. n. s. 552.

- 15. If property attached be released on bond, those who give the bond cannot afterwards plead, that the sheriff had no right in such property. Morgan vs. Furst and al. iv. n. s. 116.
- 16. A writ of attachment, duly issued, stands in the place of a citation. Schlatter and al. vs. Broaddus and al. iv. n. s. 430.

II. WHEN IT LIES.

- 17. It lies in a suit for damages. Cross vs. Richardson, ii. n. s. 323.
- 18. It lies in those cases of damages where the amount claimed does not depend on an opinion of the wrongs inflicted on the feelings, reputation or person of the plff. but on a knowledge of the injury done to his property. *Ibid.* 325.
- 19. So also in an action for the value of books delivered to be bound, which are not returned. Turner vs. Collins, i. n. s. 369.

III. WHEN IT DOES NOT LIE.

- 20. If part of the property of a person who died abroad be brought into this state, no attachment lies on it. John Brown and al. vs. Richardsons, i. n. s. 202.
- 21. It does not lie to compel the delivery of a specific thing. Hanna's Syndics vs. Loring, xi, 276.

TV. AGAINST WHOM IT LIES.

22. An attachment lies against a non-resident, although he be in the state at the time it be sued out. Bryans and al. vs. Dunseth and al. i. n. s. 412.

23. So also against the master and owners of a vessel for goods lost through their neglect. Hunt vs. Norris and al. iv. 517.

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V. AGAINST WHOM IT DOES NOT LIE.

- 24. An attachment will not lie against a non-resident executor. Debuys and al. vs. Yerby, Ex. i. n. s. 380.
- 25. An attachment does not lie against the goods of a person who has a store in the state, but is absent on a temporary visit to another or other states of the union.—Watson and al. vs. Pierpoint, vii. 413.

VI. WHAT MAY BE ATTACHED.

- 26. Property subject to a lien may be attached in the hands of a person, having such lien. Skillman vs. Bethany and al. ii. n. s. 104.
- 27. But the lien will prevail over the right of the attaching creditor. Ibid. Ibid.
- 28. One may attach in his own hands the amount of a judgment, which has been obtained against himself.—

 Grayson vs. Veeche, xii. 688.
- 29. Credits assigned are liable to be attached for the debts of the transferer before notice to the debtor. Badnal vs. Moore and al. ix. 403. Fisk vs. Chandler, vii. 24.—Ramsay vs. Stevenson, v. 23. Norris vs. Mumford, iv. 20.—Durnford vs. Syndies of Brooks, iii. 222.
- 30. If two persons ship a cargo jointly, and the consignees sell it, and credit each for his share, such share is subject to the attachment of a private creditor. *Tappan* and al. vs. *Brierly*, vii. 453.
 - 31. Partnership property may be attached in a suit a-

gainst one of the members of a firm. Cucullu vs. Manzenal and al. iv. n. s. 183.

VII. WHAT CANNOT BE ATTACHED.

- 32. Goods shipped cannot be attached for a debt of the shipper, after the bill of lading has reached the consignee to the injury of the latter's right. M'Neill and al. vs. Glass and al. i. n. s. 261.
- 33. If A. recover money for the use of B. it cannot be attached as the property of A. Davis and al. vs. Taylor, iv. n. s. 134.
- 34. If the consignor direct his goods to be sold for the payment of one of his creditors, and the consignee promise the creditor to do so, the goods are not liable to be attached by another creditor. Armor vs. Cockburn and al. iv. n. s. 667. Gray vs. Trafton and al. xii. 702.

VIII. OF THE AFFIDAVIT TO OBTAIN IT.

- 35. The affidavit is sufficient to sustain the attachment, if it will support an indictment, if the facts sworn to be not true. Cross vs. Richardson, ii. n. s. 323.
- 36. The affidavit of an agent swearing to the best of his belief, is a sufficient one.* Bridges vs. Williams, i. n. s. 98.
- 37. It may be sworn to before a deputy clerk.† Kirkman vs. Wyer, x. 126.
- 38. The affidavit of a third party, who has no personal knowledge of the existence of the debt, is an insufficient one. Baker vs. Hunt and al. i. 194.
- * See Code of Practice, articles 240, 241, 242, 243, 244, and the Acts of Assembly of 1826, p. 170, sec. 7.
- † The oath may be taken before any competent judge, justice of the peace or clerk. See Act of 1826, p. 163, sec. 5.

39. An affidavit taken before a mayor in another state, will not support an attachment. Tallant vs. Thompson and al. iv. n. s. 514.

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IX. MOTION TO DISSOLVE.

40. If by a rule of the district court no exception will be heard against an attachment, except those contained in deft's answer, it is not too late to move for a dismissal after the trial is gone into. Showell vs. Stone, xii. 386.

41 A motion to dissolve an attachment cannot be made after the trial has commenced. Watson and al. vs. M'Allister, vii. 368.

42 Strong proof ought to be required on a motion to dissolve an attachment. Moore and al vs. Angiolette, xii. 532.

Vide Action, 4. Agent, 12. Attorneys, 31, 32. Citation, 11, 12. Creditor, 4. Damages, 9. Garnishee. Presumption, 2. Sale. Sequestration. Surety.

ATTORNEYS.

- I. Attorneys at Law generally.
- II. Attorneys of absent Heirs, absent Creditors, and absent Debtors.
- III. Attorneys in fact.

I. ATTORNEYS AT LAW GENERALLY.

1. An attorney at law may make any affidavit in the proceedings of a cause, that his client can. Caulker vs. Banks, iii. n. s. 532.

2. He cannot become a legal witness in a suit in which he was employed, by striking out his name from the record. English vs. Latham, iii. n. s. 88.

3. The absence of one of the counsel, employed in a suit, is not a ground for a new trial, when the other declared himself ready. Flower vs. M'Micken, ii. n. s. 132.

- 4. Payment to an attorney, who institutes a suit, but does not proceed beyond the service of a citation, is not good, without some other proof of its legitimacy. Syndies of Cullen vs. Cenas and al. ii. n. s. 157.
- 5. An attorney who undertakes to collect a debt out of the state, and makes his agent known, is not liable for an accident, which happens in consequence of the agent's death. Baldwin vs. Preston, xi. 32.
- 6. If he stipulate with the syndics of an insolvent estate for a fixed sum as a fee, he must sue on the contract, and cannot have judgment on a rule. Seghers vs. Hanna's Creditors, x. 53.
- 7. Will be suspended for using indecorous language to the court. Michel De Armas' Case. x. 123.
- 8. A licensed attorney cannot be called on for his powers as a matter of course. Johnson and al. vs. Brandt and al. x. 638. Hayes vs. Cuny, ix. 87.
- 9. When a suit is instituted by a licensed attorney, his want of authority cannot be pleaded in abatement. Ibid.
- 10. He is liable for the mismanagement of a cause, though it be without fraud. Breedlove and al. vs. Turner, ix. 353.
- 11. But not through error of judgment, unless it be a gross one. *Ibid. Ibid.*
- 12. An attorney who collects money, and detains it, is not a depositary of his client. Durnford vs. Seghers' Syndics, ix. 470.

13. In case of his insolvency, his client has no privilege. *lbid. lbid.*

14. A suit against syndics, on a rule of court, fixing the attorney's compensation, is not a Friday cause in the parish court of Orleans. Seghers vs. Syndics of Phillips, iii. 646.

15. He has a privilege for his tax fees and costs only.—
Morse vs. Williamson and Patton's Syndies, iii. 282. Ellery
vs. Syndies of Ameling, ii. 242. Elmes vs. Syndies of Esteva.
Ibid. 264.

16. Attorney employed by a ceding debtor, to be paid by his syndics. Morel vs. Misotiere's Syndics, iii. 363.

17. An attorney cannot prosecute a suit, nor make a special bargain, depending upon the event of the suit.—

Livingston vs. Cornell, ii. 281.

18. Whether plff's attorney be liable to pay the parish tax of one dollar on each suit? Quere. Moreau vs. Duncan, i. 99.

19. If a fact be discovered, which would have prevented his admission, he may be struck off the role. Dormenon's Case, i. 129.

20. The acts of another attorney than the one on record, are not invalid. Clay's Syndics vs. Kirkland, iv. 405.

21. His receipt for the amount of a note, put into his hands for collection, binds his client. Nolan vs. Rogers, iv. n. s. 145.

22. But he cannot legally receive his own note in payment. Ibid. Ibid.

23. His authority cannot be disputed, while he acts within the limits of his professional duties. Parham vs. Murphey, iv. n. s. 355.

24. But to swear to the facts which on an attachment issues, makes no part of such duties. Ibid. Ibid.

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25. Facts communicated to him in his professional capacity, cannot be given in evidence, although he receive no fee. Baily vs. Robles and al. iv. n. s. 361.

II. ATTORNEYS OF ABSENT HEIRS, ABSENT CREDITORS, AND ABSENT DEBTORS.

- 26. An attorney of absent heirs is bound to shew his authority, and the right of those claiming as heirs. Sibley vs. Slocum, i. n. s. 638.
- 27. His compensation must be fixed by the inferior court, and if the allowance be not exorbitant, the supreme court will not interfere. Labatut and al. vs. Rogers and al. vi. 416. Morel vs. Misotier's Syndies, iii. 363.
- 28. One for an absent debtor must have his fees fixed by the court: he cannot be paid on a quantum merunt out of the property attached. Ellery vs. Gouverneur and al. iii. 606.
- 29. One appointed by a court of probates to represent absent heirs, cannot do so in another court. Harrod and al. vs. Norris' Heirs and al. x. 16.
- 30. The fees of the counsel, appointed to represent the absent creditors, are in no case to be paid by the mass. M'Coy vs. His Creditors, iv. n. s. 67.
- 31. When the plff in an attachment case is cast, the attorney appointed to defend the absent debtor, is entitled to have no more than the fee of eleven dollars, taxed in the costs. Hicks vs. Duncan and al. iv. n. s. 497.
- 32. He may be heard in court, although there be no property attached. *Ibid.* 314

III. ATTORNEYS IN FACT.

33. Whether an attorney in fact can accept a succession? Leceshe vs. Cottin, ii. n. s. 475.

34. A power to sign the constituent's name in any transaction, in which the attorney may deem it necessary and proper, does not authorize the endorsement of a note. Clay vs. Bynum, i. n. s. 608.

35. A power to sell does not authorize the attorney to

give in payment. Durham vs. Oddie, i. n. s. 444.

36. One especially authorized to receive a mortgage, is not liable for not giving notice of it, without having been directed to do so. Hodges' Heirs vs. Durnford, i. n. s. 100.

37. To appoint one, no particular form is required: it is sufficient if the principal distinctly express his will. Steer vs. Ward and al. x. 679.

38. An attorney appointed to administer on his principal's estate, is not authorized to sell slaves. *Ibid. Ibid.*

39. An attorney authorized to institute a suit, and prosecute it to judgment, is not authorized to make a compromise, nor to receive the money recovered. Kilgour vs. Ratcliff's Heirs, ii. n. s. 292.

40. His irregular act may become binding on his principal by the implied ratification thereof, by the latter. Pe-

chaud vs. Peytavin, iv. 73.

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41. Under a general power the attorney has a right to substitute another to act in his place. Heirs of Dubreuil, f. p. c. vs. Rouzan, i. n. s. 158.

42. A power to receive what is due from a debtor, necessarily implies the right to allow him any payments he has already made. This appears quite different from acknowledging a debt, for which a special authority is declared by the civil code, to be requisite. *Ibid.* 161.

43. An attorney in fact may bring suit in his own name for the use of his principal. Eggleston vs. Colfax and al. iv. n. s. 481.

44. If one be sued as attorney in fact, and there be judgment against him generally, it will not affect him individually; but simply as attorney. Baudin vs. Dubourg and al. iv. n. s. 496.

Vide BILLS OF EXCHANGE AND PROMISSORY NOTES, 56. CITATION, 4, 13, 14. EVIDENCE, 137. PRACTICE, 170. PRESCRIPTION, 6. SUBSTITUTION. TAXES. WITNESS. CONTEMPT. AGENT. FACTOR.

หลังใช้โดยที่เรื่องสัง หรือที่ที่ที่สู่เหลืองสหรองสารออกสารอย่าง และ 61 กันนี้ - ครั้งสังเรียวอีกสารที่สู่สังเพียงสังเทียงที่ได้เรื่องสารออกสารอย่างกลังเกียงสารอย่าง

AUCTIONEER.

1. If A. give goods to B. to sell, and B. procure an auctioneer to sell them, the auctioneer is accountable to B. only. Hewes vs. Lauve, x. 21.

2. A bidder may refuse to take lands struck off to him, on discovery of an incumbrance, and the proclamation of the auctioneer before the bids began, is no evidence of the bidder's knowledge of the incumbrance. Porter and al. vs. Liddle, vii. 23.

3. If property be leased by an auctioneer, he is to be allowed for his trouble on quantum meruit. Dutillet and al. vs. Chardon, v. 307. Same vs. Same, iv. 611.

4. A bond given by an auctioneer, instead of a recognizance, is valid. Claiborne vs. Debon and al. iii. 565.

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Vide Sale. Surety. Bonds.

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1. Goods taken out of a vessel, and put on the beach to lighten her, furnish cause for a claim of general average in case of damage. Hennen vs. Monro, iv. n. s. 449.

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1. Although all the arbitrators must be present when the award is signed, their unanimity is not required by any law. Porter vs. Dugat, xii. 245.

2. An award in the French language cannot be homologated.* Ditman vs. Hotz, ix. 200.

3. On an award being brought in, the practice of the court is, to give notice to the adverse party, to shew cause why judgment should not be entered, according to the award. M'Master and al vs. Duncan and al ii. 264.

Vide Constitutional Law. Family Meeting. Arbitrators. Referees.

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miles from a set to BAIL.

- 1. Bail may be demanded in a supplemental petition. Eshom vs. Lamb, ii. n. s. 219.
- * Awards in the French language, good. See Act of the 16th March, 1822, on this subject.

2. The affidavit to hold to bail may be annexed to a supplemental, as well as to an original petition. Vidal vs. Thompson, xi. 23.

3. An order of bail will not be granted on an affidavit, that the sum claimed is due as the affiant believes: it must be positive when made by the creditor. *Penrice* vs. *Crothwaite and al.* xi. 537.

4. There is no need of a prayer for bail. Labarre vs. Durnford, x. 180.

5. Judgment may be had against the bail, without the suit being formally set down. Kirkman vs. Wyer, x. 126.

6. Nor can evidence of the non-age of a deft. be received on a motion to discharge him from bail. David vs. Sittig, x. 607.

7. In proceeding by motion against the bail, he has a right to demand, that the facts be tried by a jury. Labarre vs. Fry's Bail, ix. 381.

8. One who has obtained time to pay his debts, cannot be held to bail for an anterior one. Davis vs. Mitchell, ii. 115.

9. Not released by a stay of proceedings. Henderson vs. Lynd, Bail of Brown, ii. 57.

10. Not discharged on motion, on account of plff's disability to sue. Welman, Curator, &c. vs. Connoly, ii. 245.

11. Proceedings against bail stayed on affidavit of collusion. Barret vs. Bail of Lewis, i. 189.

12. Denied to a party indicted for a capital crime.— Territory vs. Benoît, i. 142. Same vs. M'Farlane, i. 216.

13. Not to be required on actions on penal statutes.— Saul vs. Ailier, i. 21.

14. It cannot be required on a debt assumed after a cessio bonorum. Packwood vs. Foelèkell, i. 60.

- 15. Nor in action for defamation. Folk and al. vs. Solis,
- 16. Nor when the affiant does not shew a specific sum to be due. Weeks vs. Trask, i. 117.
- 17. Nor when the affidavit was made before the debt became payable. Whetton vs. Townsend, i. 188.
- 18. Nor when the affiant derives all his knowledge from the plff. Meeker's Assignees vs. Meeker, i. 68.
- 19. Are not responsible in solido, unless one of them become insolvent, or unless when sued, they fail to claim benefit of division.* United States and al. vs. Hawkins' Heirs, iv. n. s. 317.

Vide Notice, Practice, 165, 166.

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BAILMENT.

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- 1. The bailee cannot oppose to the bailor the right of a third person to the thing bailed. Butler vs. Kenner and al. ii. n. s. 274.
- 2. Conventional sequestrators, acting without compensation, are subject to the same obligations as depositaries.

 Lafarge and al. vs. Morgan and al. xi. 462.
- 3. When it appears that they were acting for both parties, their duty was to hold the property till the parties agree, or a court order, that it should be given up. *Ibid.*
- 4. A person keeping property without reward, is responsible for gross neglect, or fraud only. Ibid. Ibid.
- * On this subject, see Code of Practice, commencing at Art. 210.—Also, the Acts of Assembly of 1826, page 168, sec. 4, 5.

- 5. So where A. received notes of B. in favor of C. to be delivered to the payee, when certain incumbrances were raised; held that on B's. forbidding A. to deliver them, A. was not responsible for damages, though B. might be, in case he had not a sufficient reason to forbid their delivery. *Ibid. Ibid.*
- 6. The master of a vessel is liable for levissima culpa.— Hennen vs. Monro, xi. 579.
- 7. In contracts which are beneficial to both parties, the bailee is to take that care, which a prudent man takes of his own goods. Nicholls vs. Roland, xi. 190.
- 8. In an action on such a bailment, the facts which excuse the failure to return, must be proved by the bailes.—

 Ibid. Ibid.
- 9. He who takes charge of a slave, without reward, is not liable for his fortuitous escape. Bayon vs. Prevot, iv. 58. Vide Deposit.

BANKS.

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- 1. The directors of a bank, even after the expiration of its charter, are not suable by a partial number of stock-holders to answer in damages for particular charges of mismanagement and fraud. Faurie and al. vs. Millaudon and al. iii. v. s. 476.
- 2. A bank has no summary relief against the maker of a note, not given for the purpose of being discounted. U.S. Bank vs. Fleckner, viii. 141.
 - 3. An usage common to all the banks in New-Orleans,

cannot be deemed a legal rule of conduct for any of them. Ibid. 309.

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- 4. No relief can be had against a forfeiture of antecedent instalments paid to the state bank, on failure to pay posterior ones, although the delinquent may offer to pay up the latter after they become due with interest. Brandt and al. vs. Louisiana State Bank, viii. 310.
- 5. If a bank neglect to present a bill or note, it thereby becomes liable to the party who lodged it for collection. Durnford vs. Patterson and al. vii. 460.
- 6. A bank cannot obtain judgment on motion, under the act of 1818, without giving notice to the party. State Bank vs. Seghers, vi. 724.
- 7. Proceeds of the sale of goods on commission, placed in bank by the vendor to his own account, cannot be viewed as a deposit, belonging to the owner of the goods. Musson vs. Bank of U. S. vi. 707.
- 8. The U.S. bank has no lien on notes deposited for collection. Syndies of Ameling vs. Bank of U.S. i. 322.
- 9. The act incorporating the Louisiana State Bank, is a public act. Louisiana State Bank vs. Flood, iii. n. s. 341.
- 10. A bank is responsible for the neglect of the notary it employs. Montillet vs. Bank of U. S. i. n. s. 365.
- 11. A bank cannot contest the right of a person who lodges a note for collection. Canonge vs. Louisiana State Bank, iii. n. s. 344.
- 12. A bank is suable for neglect, in protesting and giving notice before the plff. proceeds against the endorsers. *Ibid. Ibid.*

Vide Acts of Assembly, 3. Louisiana State Bank.—Bank Notes.

BANK CHECKS.

1. A power to fill a blank check is personal. Musson vs.

Bank of U. S. vi. 707.

2. If a vendor on his death bed declare, that money deposited by him in bank belongs to the owner of the goods sold by him, and order a blank check to be given him for it, this will be such evidence of the right of the owner, as will enable him to maintain an action for it. *Ibid. Ibid.*

3. A bank check fairly obtained from one who came by it unfairly, may be recovered upon by the holder, if he took it without any knowledge of the fraud. Clark vs.

Stackhouse, ii. 319.

BANK NOTES.

1. Possession is prima facie evidence of property in a bank note. Louisiana Bank vs. Bank of U.S. ix. 398.

2. A bank note from which the signatures of the president and cashier are torn off, is recoverable. Miner vs. Bank of Louisiana, i. 12.

3. Counterfeiting notes of the bank of the U. States, is an offence against the territory. Territory vs. Ross, i. 146.

BANKRUPTCY.

1. A certificate of bankruptcy in England, does not bar

the suit of an American for a debt contracted in the U. States. Mitchell vs. M. Millan, iii. 676.

2. Fraud is presumed in cases of bankruptcy. Misotiere's Syndics vs. Coignard, iii. 561, Menendez vs. Larionda's Syndics. Ib. 708. Mitchell vs. M'Millan. Ib, 695.

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3. Neither the bankrupt nor his books can be admitted to charge the estate. Menendez vs. Larionda's Syndics, iii. 256.

4. If a claim of a creditor, evidenced by a note, be resisted by the syndics of a bankrupt, he must prove the execution of it; but he cannot be held to the proof of the consideration. Menendez vs. Larionda's Syndics, iii. 705.

Vide Insolvent. Cessio Bonorum. Respite. Surrender.

BARRATRY.

1. An act of barratry being once proven, the insurer is bound to prove every fact tending to excuse it. Barry vs. Louisiana Insurance Company, i. n. s. 69. Millaudon vs. New-Orleans Insurance Company, xi. 602.

2. The presence of the owner is not conclusive evidence of his assent to any act which is alleged to constitute barratry. Millaudon vs. New-Orleans Insurance Company, xi. 602.

3. Barratry is any kind of cheat or fraud committed by the masters or mariners to the prejudice of the owners. *Ibid.* 605.

4. Barratry cannot be committed by a master who has the equitable title of the vessel. Barry vs. Louisiana Insurance Company, xi. 630.

BAYOU BRIDGE. PSEE NEW-ORLEANS.

BET.

1. A bet on an election according to the return of all the parishes in the state, is a drawn one if two parishes make no return. Montillet vs. Shiff, iv. n. s. 83.

BILL OF EXCEPTIONS.

- 1. None lies to a final judgment. Goodwin vs. Heirs of Chesneau, iii. n. s. 409. Moore vs. Maxwell and al. ii. n. s. 249. Shewell vs. Stone, xii. 386. Fagot vs. David, iv. 1. Duverny's Heirs vs. Lafon, Ibid. 96. Bujac and al. vs. Mayhew, iii. 613.
- 2. Does not lie to a judge's charge after verdict. Vaughan vs. Vaughan, iii. 215.
- 3. It lies to a judge's charge on a point not called for. Rochelle & Shiff vs. Musson, iii. 73.
- 4. So also to the opinion of a judge refusing to submit facts within the pleadings to the jury. Duplantier vs. Randolph, iii. 199.
- 5. If the judge refuse to sign one, a mandamus will issue. Broussart vs. Trahan's Heirs, iii. 715.
- 6. One to the opinion of the court in refusing a conditional verdict, will not be noticed if the whole evidence

come up with the record so as to enable the supreme court finally to dispose of the cause. Duncan and al. Syndies vs. Martin and al. v. 213. Abat vs. Doliolle, iv. 316.

7. Neither will one to the admission of a witness be noticed, if the facts proven by him have also been proven by other legal testimony. Johnson vs. Duncan and al. Syndies, v. 168.

8. Nor are those to the inferior court on matters of form alone, noticed on an appeal, as the judgment cannot be reversed on account of informalities in the proceedings. Labatut and al. vs. Rogers, vi. 272.

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9. It is the duty of the party excepting, to put upon the record so much of the testimony as is necessary to test the exception. Butler vs. De Hart, i. n. s. 184.

10. If the counsel in a cause say that he will except to the opinion of the court, but does not draw up the bill immediately, the exception is good if such bill be drawn up and tendered at any time during the trial. Livingston vs. Heerman, ix. 195.

11. If the counsel take exception, and offer to draw up a bill, but the judge insists on doing it himself, and neglects it, the supreme court will order it to be drawn and sent up. Broussart vs. Trahan's Heirs, iii. 714.

12. When the whole of the facts come up with the record, a bill of exceptions to the charge of an inferior court will not be noticed. *Maurin* vs. *Toustin*, vi. 496.

13. A bill of exceptions may be taken to the opinion of the judge on a question of law, growing out of the merits, if given on sending the cause before referees. Parquin and al. vs. Finch, i. n. s. 465.

14. The party excepting is bound to take care that the bill contain sufficient matter, to enable the supreme court

to revise the opinion of the court below. Villere vs. Armstrong and al. iv. n. s. 21.

15. A bill of exceptions will not be considered by the supreme court; if circumstances render its examination of no importance in the cause. Davenport's Heirs vs. Fortier and al. iv. n. s. 72.

Vide APPEAL, 26, 72. COURTS OF JUSTICE GENERALLY, 6. SUPREME COURT. PRACTICE, 169.

BILLS OF EXCHANGE AND PROMISSORY NOTES,

- I. Bills of Exchange and Promissory Notes generally.
- II. Form and requisites of.
- III. Description of Bills and Notes.
- IV. When not negotiable.
- V. Presumption of negotiability.
- VI. Consideration.
- VII. Acceptance and non-acceptance of.
- VIII. Payment and non-payment of.
 - IX. Demand of payment and protest, and notice of non-acceptance and non-payment.
 - X. Transfer and Endorsement.
 - XI. Liability of the parties and how discharged.
- XII. Evidence relative to.
- XIII. Action on a Bill or Note.

I. BILLS OF EXCHANGE AND PROMISSORY NOTES GENERALLY.

1. The notary's paragraph, ne varietur, does not affect

the negotiability of a promissory note. Canfield vs. Gibson, i. n. s. 143. Fusilier vs. Bonin and al. xii. 235.

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- 2. When the maker relies on payment before endorsement, the onus probandi lies upon him. Canfield vs. Gibson, i. n. s. 143.
- 3. If a note do not state the place in which it was given, the court may presume that it was given at the place in which the maker and payee reside. Crouse vs. Duffield, xii. 540.
- 4. Possession is not evidence of property in a note, the interest of which on inspection, appears to be in another. Robson vs. Earley, i. n. s. 373.
- 5. The subscribing witness to a note, given out of the state, is to be presumed to be out of the jurisdiction of its courts. Crouse vs. Duffield, xii. 539.
- 6. Strict proof is required of the authority of a third person to receive notice in behalf of the endorser. Montillet vs. Duncan, xi. 534.
- 7. A note, the payment of which is secured by a special mortgage, may be sued upon in the ordinary way. Croghan vs. Conrad, xi. 555.
- 8. The endorser of a note cannot claim its amount, if it be not re-endorsed to him, unless he has paid it to one of the subsequent endorsees. Arnold vs. Bureau, vii. 287.
- 9. A note payable in merchandize cannot be offered in payment of a cash debt. Canfield and al. vs. Notrobe, vii. 317.
- 10. A note is not presumed to have been paid, on the lapse of five or six years. Loze vs. Zanico's Estate, v. 391.
- 11. If one put his name on the back of a note, not negotiable, the presumption is, that he meant to become surety for the maker. Cooley vs. Lawrence, iv. 639.

- 12. If a note be endorsed over for collection, and the endorsee not being able to recover its amount, return it to his endorser: the latter will recover on it, although there be no endorsement. Delisle vs. Gaines, iv. 666.
- 13. A memorandum at the foot of a note, changing the place of payment, does not avoid it. Nugent vs. Delhomme, ii. 307.
- 14. If an executor receive a note payable to him as such, for a debt due to the estate, he may bring suit thereon in his own name; the word executor being merely descriptive. Urguharts, Executors &c. vs. Taylor, v. 202.
- 15. Whether the plff. may recover on a note alleged, and by him sworn to be lost, proven to have been returned by a broker when there were many persons around him, and that the deft. had given it for a valuable consideration, and promised to pay it? Nagel vs. Mignot, vii. 657.
- 16. The place of payment of a promissory note is accidental to the contract, not of the essence of it. Mellon vs. Croghan, iii. n. s. 423.
- 17. If a bill of exchange be given in discharge of a precedent debt, the drawer is responsible, if it be dishonored. Turner vs. Hickey, iii. n. s. 256.
- 18. If notes be placed in a man's hands for collection, and to secure him for advances made and to be made, he may resist a demand of them till he be indemnified. King's Curator vs. Osborne and al. ii. n. s. 247.
- 19. Notes avowedly made to a merchant for the sole purpose of obtaining his endorsement, and by this means his responsibility also, are as strictly mercantile paper as a bill of exchange is, which subjects the parties thereto to mercantile law. Harrod and al. vs. Lafarge, xii. 21.

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II. FORM AND REQUISITES OF.

20. De act which requires the sum to be written at full length, does not affect notes made previous to its passage. White and al. vs. Brown and al. iii. n. s. 17.

21. A note in which the sum is stated in figures, is valid-

Nugent vs. Roland, xii. 659.

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22. If the fractions of a dollar be expressed in figures, the note is not void, but the fractions will be rejected.*—
Pilie vs. Mollere, iv. n. s. 42.

III. DESCRIPTION OF BILLS AND NOTES.

23. In the description of a note, an error in the fractional part is fatal. Pilie vs. Mollere, ii. n. s. 666.

IV. WHEN NOT NEGOTIABLE.

24. A note payable in sugar, is not negotiable. Pepper vs. Peytavin, xii. 671.

V. PRESUMPTION OF NEGOTIABILITY.

25. The presumption of a bill's being intended to be negotiated, yields to proof of the contrary. Robertson vs. Nott and al. iii. n. s. 268.

VI. CONSIDERATION.

26. What is full value for a note, is a question of law. Flood and al. vs. Shaumburg, iii. n. s. 622.

27. The consideration of a note may be inquired into.

^{*} The Act referred to in point 20 and 22 is repealed.

whilst it is in the hands of the payee. Grieves' Syndics vs. Sagory, iii. 599. Brown vs. Fort and Giraud, i. 34.

28. The acceptor has no right to inquire into the consideration between the original parties. Dubuys vs. Johnson, iv. n. s. 286.

VII. ACCEPTANCE AND NON-ACCEPTANCE OF,

29. If a bill be accepted on the promise of a mortgage, which is executed afterwards on the eve of the failure of the mortgagor, it will have effect from the date of such acceptance, and be valid. Wyer's Syndics vs. Sweet and al. ii. n. s. 588.

VIII. PAYMENT AND NON-PAYMENT OF.

- 30. Payment of a note or bill supra protest, cannot be made before protest. Holland vs. Pierce, ii. n. s. 499.
- 31. Payment of a note in the hands of the original payee, may be resisted on failure of the consideration. Byrd vs. Craig, i. n. s. 625.
- 32. A note payable on a day "fixed," not entitled to days of grace. Durnford vs. Patterson and al. vii. 460.
- 33. When the maker of a pote relies upon payment before the endorsement, the burthen of proof as to the time of the endorsement lies on him. Canfield vs. Gibson, i.n. s.143.
- IX. DEMAND OF PAYMENT, PROTEST, AND NOTICE OF NON-ACCEPTANCE AND NON-PAYMENT.
- 34. Notice of protest is necessary to charge the drawer, although the bill be given in discharge of a debt, whether the parties be merchants or not. *Penn* vs. *Poumeirat*, ii. n. s. 541.

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35. The oath of a notary that he protested a draft, and that he was generally in the habit of giving notice on all protested notes and bills, and presumed that he gave notice to the deft. as he was requested to be very particular about it, and that his habit was to put notices in the post office to be sent off by the first mail; but having a great deal of protesting to do that summer, he has no distinct recollection of notifying the deft.—is not sufficient proof of notice. Hoff vs. Baldwin xii. 699.

36. The endorsee who receives a bill after it is due, is bound to demand payment and give notice within the same delay as if he had received it before maturity. Hill vs. Martin, xii. 177.

37. It is not sufficient to excuse want of notice, that the endorser was not injured by the neglect. *Ibid. Ibid.*

38. Reasonable notice to the endorser, is a mixed question of law and fact. Spencer vs. Sterling, x. 88. Chandler vs. Same, ix. 565.

39. Proof of notice to an endorser, is essential to a recovery against him. Johnson's Executor vs. Duncan and al. Syndies, x. 706.

40. The holder of a bill payable after sight, drawn in New-Orleans on Liverpool, is not guilty of laches by sending it to New-York for sale. Bolton and al. vs. Harrod and al ix. 326.

41. Notice to the endorser must be alleged and proven. Garnier vs. Couchoix, ix. 514. Abat vs. Rion, vii. 562.

42. A bill from the quarter master general on the secretary of the United States, need not be protested in case of non-payment. Baker vs. Montgomery and al. iv. 90.

43. Notice of non-payment must be given in a reasonaable time. *Pinder* vs. *Nathan and al.* iv. 346. *Duncan* vs. Young, i. 32. 44. If the endorser reside at the distance of six miles, three or four days are too great a delay in giving notice. Reynolds vs. Buford, iii. n. s. 35.

45. When a note is made payable at a particular place, payment must be demanded there, before recourse can be had against the maker. Mellon vs. Crughan, iii. n. s. 423.

46. If a note be payable at the house of A. B. a demand at his dwelling house or office is good. Miller vs. Hennen, iii. n. s. 587. State Bank vs. Hennen, iv. n. s. 227.

47. If the maker of a promissory cannot be found, payment must be demanded at his domicil, if it be within the state. Louisiana State Ins. Co. vs. Shaumburgh, iii. n. s. 511.

- 48. Notice to the endorser is, in all cases, necessary; but the failure may be excused, if the place of his residence be unknown, and due diligence used to discover it. M'Lanahan and al. vs. Brandon, i. n. s. 321.
- 49. Notice of non-payment must be given on the day which follows the protest. Canonge vs. Couchoix, xi. 452.
- 50. The maker of a note is to be called upon at his domicil. Hennen vs. Desbois and al. viii. 147.
- 51. When the maker of a note dated in New-Orleans resides out of the state, it is sufficient to demand payment at the place where it purports to have been executed. Hepburn vs. Toledano, x. 643.
- 52. If, after the dissolution of a partnership, one of the partners endorse a note due to the firm, the endorsee is not bound so strictly to give notice in case of non-payment, as if the note had been regularly endorsed. Walker and al. vs. M'Micken, ix. 192.
- 53. Notice of protest by a bank, enures to the benefit of prior endorsers. Abat vs. Rion, ix. 465.
 - 54. The maker of a note is to be called on for payment,

before resort can be had to the endorser. Durnford vs. Johnson, ii. 183.

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55. Impending insolvency will not dispense with the necessity of a demand of payment from the maker of a note. Walton vs. Watson and al. i. n. s. 347.

56. Strict proof of notice to an endorser is required. Syndies of Portas vs. Paimbauf, i. 267.

57. A holder of a bill of exchange is not obliged to give notice to all the antecedent parties to it—it is sufficient to notify those to whom he looks for payment; and they, in like manner, must notify those to whom they look. State Bank vs. Hennen, iv. n. s. 227.

58. Notice of the protest of a note is improperly given to an attorney with special powers, which do not authorize him to receive such a notice. Louisiana State Bank vs. Ellery, iv. n. s. 87.

59. A certificate of protest is not good, unless it state in what post office it was put. Laporte vs. Landry, iv. n. s. 125.

60. A waver of the want of notice cannot be inferred. Ibid. Ibid.

X. TRANSFER AND ENDORSEMENT.

61. The circumstance of the endorsement of the payee being stricken out, does not furnish proof of the interest being in the drawer, if he sue the acceptor. Thompson vs. Flower and al. i. n. s. 301.

62. The endorsee cannot write over a blank endorsement, an obligation which will discharge him from the burthen of a demand or notice. Hill vs. Martin, xii. 177.

63. A person to whom a bill is regularly endorsed, has a right to recover from the drawer; and it is no defence to

shew that a third party has an equitable interest in it.— Bolton and al. vs. Harrod and al. ix. 344.

64. A blank endorsement may be stricken out at the trial. Baker vs. Montgomery and al. iv. 90.

65. The endorsee of a bill must prove the hand writing of his endorsers. Michell vs. Ayme, iii. 647.

- 66. If a note be regularly endorsed, the plff. cannot be put upon proof of his right thereto, unless it be alleged that he did not come fairly by it. Banks vs. Eastin, iii. n. s. 291.
- 67. A blank endorsement renders the note payable to the bearer. *Ibid. Ibid.*
- 68. The deft. cannot call in question the plff's right to a note to which he has a prima facie title. Shaw and al. vs. Thompson, iii. n. s. 392. Banks vs. Eastin. Ibid. 291.
- 69. The endorser of a note given by the maker for the purchase of a slave, is by the payment of it subrogated to the rights of the vendor, and may demand a rescission of the sale of the vendee. Torregano vs. Segura's Syndic, ii. n. s. 158.
- 70. An endorsee without notice, is not affected by any equity between the original parties. Thompson vs. Gibson, i. n. s. 150. Hubbard and al. vs. Fulton's Heirs, ix. 86. Same vs. Same, vii. 241.
- 71. The endorsee to whom a note is endorsed, after maturity must allow as a sett-off existing claims of the maker against his endorser. Herriman vs. Mulhollan, i. n. s. 605.
- 72. A blank endorsement gives a right of action to the holder of a note. Allard vs. Ganusheau, iv. 662.
- 73. If the payee of a note write on the back of it, that he guarantees the payment of it, this does not make the

person to whom he delivers it, an endorsee. Canfield and al. vs. Vaughan and al. viii. 682.

74. A blank endorsement may be filled up at the trial. Poutz vs. Duplantier, ii. 328.

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XI. LIABILITY OF THE PARTIES AND HOW DISCHARGED.

75. A promise to pay a bill, if duly protested, does not bind the promisor to pay it, if protested after such promise. *Penn* vs. *Poumeirat*, ii. n. s. 541.

76. The drawer cannot recover from the acceptor, without shewing that the interest in the bill, or right of the payee has passed to him. Thompson vs. Flower and al. i. n. s. 301.

77. If a bill be protested for non-acceptance, and due notice given to the endorser, his liability is not affected by the neglect of the holder to protest for non-payment in due time. *Morgan* vs. *Towles*, viii. 730.

78. The declaration of the drawee of an intention to pay the bill, does not prevent his questioning the authority of the drawer. Nancarrow vs. Nelson, v. 599.

79. If A. employ B. to purchase bills and he gets them on his own credit from C. the latter will have no action against A. if there be no fraud between A. and B. Armory and al. vs. Grieves' Syndics, iv. 632.

80. The drawer of a bill may shew, that in the knowledge of the original payee who still holds it, he drew as agent, although the agency does not appear on the face of the bill. Krumbhaar vs. Ludeling, iii. 640.

81. A note endorsed by a partner, does not render the endorsee liable to the firm for laches, but he will be liable

to the partner who endorsed it. Collins and al. vs. M'Crummen and al. iii, n. s. 166.

- 82. An agreement by the endorsee, after protest and notice, to receive in payment pickets at a fixed price, on a distant day discharges the endorser. Millaudon vs. Arnous and al. iii. n. s. 596.
- 83. A bank is not relieved from the obligation of due diligence, with regard to a note received for collection, by the removal of the maker's domicil out of the city. Louisiana State Ins. Co. vs. Louisiana State Bank, iii. n. s. 610. Montillet vs. U. S. Bank, i. n. s. 365. Crawford vs. Louisiana State Bank, i. n. s. 214 and 706.
- 84. One to whom a note is endorsed after maturity, must allow every equitable defence to the maker. Turcas vs. Rogers, iii. n. s. 699.
- 85. If payment be made before protest, although the note is afterwards protested, the endorser will not be liable. Holland vs. Pierce, ii. n. s. 499.
- 86. The payee who has endorsed a note cannot maintain an action on it for the use of the endorsee. Moore vs. Maxwell and al. ii. n. s. 249.
- 87. If an endorser, ignorant of the fact, that no demand was made on the maker, promise to pay, he will be relieved. Hennen vs. Desbois and al. viii. 147.
- 88. The endorser of a note not negotiable, is not suable before the insolvency of the drawer. Rippey vs. Dromgoole and al. viii. 709.
- 89. On the failure of a debtor, his note, though not yet payable, may be put in suit. Fisk vs. Chandler, vii. 24.
- 90. The endorser is discharged, if the holder neglect the proper means of discovering the maker's residence, and make no demand. Hennen vs. Johnston and al. vii. 364.

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91. If one put his name on the back of a note as surety, his liability does not depend on the fulfilment of the formalities required to render an endorser liable. Cooley vs. Lawrence, iv. 639.

92. The payee may recover from such a surety, although he has neglected to sue the principal, or through delay may have suffered some advantage to have been lost, whereby the surety is placed in a worse situation. *Ib. Ib.*

93. Although no actual demand was made, if due diligence was used, the endorsers are liable. Lanusse vs. Massicot and al. iii. 261.

94. A party to a note personally suable, although he signed it as parish judge. Paillette and al. vs. Carr, iii. 489.

95. Payment of one of the parties to a note, discharges the others, even of costs, when there is no judgment.—
Nugent vs. Delhomme, ii. 307.

96. A sale of the property of one of the parties to a note, which has not produced the money, does not discharge the others. Poutz and al. vs. Duplantier, ii. 328.

97. If the place of payment be changed, parties taking the note, after such alteration, are bound by it; and as to them, demand is well made at the new place. Nugent vs. Mazange, ii. 265.

98. If a note, alleged to have been lost, be admitted to have been executed, and is proven to have been protested and returned to the plff. he will not be compelled to give security. Brent vs. Ervin, iii. n. s. 303.

99. A failure to demand payment of a note on the day it falls due, will not discharge the maker, although it may the endorser. Mellon vs. Croghan, iii. n. s. 423.

100. The obligation of an endorser is a legal consequence; and if he be bound to pay, the law is to deter-

mine in what capacity, and to whom. Shelmerdine vs. Duf-

fy, iv. n. s. 34.

101. Due diligence must be used by the holder of a bill to find out the residence of the maker, or the endorser will not be responsible. Bellievre vs. Bird, iv. n. s. 186.

XII. EVIDENCE RELATIVE TO.

102. Parol evidence is admissible to prove an agreement between the parties to a bill, that it should not be negotiated. Robertson vs. Nott, ii. n. s. 122. Coupry's Heirs vs. Dufau, i. n. s. 90. Le Blanc vs. Sanglair and al. xii. 402.

103. The drawer may shew by parol evidence, that he received no compensation therefor. Coupry's Heirs vs. Dufau, i. n. s. 90. Krumbhaar vs. Ludeling, iii. 640.

104. A notarial protest is of itself legal evidence that the bill was protested. Bolton and al. vs. Harrod and al. ix. 347.

105. Parol evidence may be received of the endorser's promise to pay after protest. Debuys vs. Mollere, iii. n. s. 318.

106. An endorser may prove an alteration made after endorsement. Shaumburg vs. Commagere and al. x. 18.

107. The maker of a promissory note may prove its execution. Abat vs. Rion, ix. 465.

108. Parol evidence of a written notice of protest to the endorser, may be received, although no call was made on him to produce it. *Ibid. Ibid. Stockdale* vs. *Escaut*, iv. 564.

XIII. ACTION ON A BILL OR NOTE.

109. In an action against the drawer, if no demand or notice be alleged, the judgment will be arrested. Barbarin vs. Descahaut's Heirs, iii. n. s. 639. Garnier vs. Couchoix, ix, 515. Abat vs. Rion, vii. 562.

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110. If an endorser be sued on a protest for non-acceptance in order to compel him to give security, and afterwards on a protest for non-payment, on judgment being obtained in the latter suit, the plff. cannot recover costs in the former. Bolton and al. vs. Harrod and al. x. 115. Faurie vs. Pitot and al. Syndics ii. 83. Nugent vs. Delhomme, ii. 307.

111. The maker cannot require that the payee be made a party, and answer interrogatories in an action against him by the endorsee. Compton and al. vs. Patterson, iii. n. s. 164.

112. If the petition does not shew notice to the endorser, the judgment should not be final—but the plff. should be non-suited. Foster vs. Randolph, ii. n. s. 495.

113. Suit may be brought on a note not negotiable in the name of the payee, for the use of the transferee. Filhiol vs. Jones and al. viii. 635.

114. A prior endorser cannot be called in to defend a suit. Lanusse vs. Massicot and al. iii. 261.

115. In an action on a lost note, the plff. is held to very strict proof. Camfrane vs. Dufour's Heirs and al. viii. 144.

116. In an action on a note not payable to order, shewn to have been given in payment for goods, and alleged to be mislaid, if the defendant do not plead payment, slight evidence of the mislaying will suffice. Nagel vs. Mignot, viii. 488.

117. A party sued on a note may be required to answer on oath, whether he did not subscribe, and the payee endorse it: on his refusal or failure to answer, judgment will be given against him. Bullet vs. Serpentine, xii. 393.

Vide Banks, 5, 12. Agent, 6, 7, 8. Evidence, 91, 92. Husband and Wife, 14, 15. Notice. Practice, 4, 40, 111, 113. Protest. Bank Notes,

BILLS OF LADING.

1. Bills of lading do not vest the property in the consignee. Woolsey vs. Cenas, i. 26.

BILLS OF SALE.

1. The bill of sale of a parish judge is good, though he take the appellation of sheriff, and not that of judge. Bayon vs. Mollere and al. iv. 66.

Vide PARISH JUDGE. SALE.

BONDS.

- 1. Bonds generally.
- II. Appeal Bonds.
- III. Bail Bond.
- IV. Custom-House Bonds.

I. BONDS GENERALLY.

- 1. A twelve months' bond is void, if taken for more than the property sold for. Aubert vs. Buhler and al. iii. n. s. 489. Lartique vs. Baldwin, v. 193.
- 2. A surety on a twelve months' bonds cannot be relieved on the ground that the sheriff neglected to file it with the execution. Evans vs. Nash, iii. n. s. 669.

3. The surety on a twelve months' bond is immediately liable, although the principal may have died since its execution. Bynum vs. Jackson, x .426.

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- 4. Whether the penalty of a bond may be demanded before the deft. be in mora? quere. Bryan vs. Cox, iii n. s. 574.
- 5. In a judicial obligation, the deft's surety has no right to claim discussion: he is subject to the same responsibility as the principal. *Ibid.* 575.
- 6. A bond given before an order of court is made, is as binding as if made after. Collins vs. Welsh, iii. n. s. 82.
- 7. A party who subscribes a bond in blank, is bound by what is afterwards written on it. Breedlove and al. vs. Johnston, ii. n. s. 517.
- 8. No action lies on an injunction bond, when the injunction is dissolved by the consent of the parties. *Ibid. Ibid.*
- 9. A bond given on suing out an injunction, cannot be cancelled on a motion of the obligor. Leake vs. Breedlove and al. i. n. s. 257.
- 10. An injured party may bring suit on a marshal's bond, in his own name. Hernandez and al. vs. Montgomery, ii. n. s. 422.
- 11. It is a breach of such a bond, not to have the proceeds of a sale ready in court. Ibid. Ibid.
- 12. The sealing and formal delivery of a bond is not required by law. Labarre vs. Durnford, x. 180.
- 13. A bond with disjunctive conditions will be satisfied by the performance of either. Reagan vs. Kitchen and al. iii. 418.
- 14. The plff, may sue the surety on a prison bounds bond, without the principal, and before judgment against the latter. Wood and al. vs. Fitz, x. 196.

15. The condition of such a bond need not be literally that in the statute. *Ibid.*

16. The party cannot object that he was in custody when he signed the bond. Ibid. Ibid.

17. The signature of an officer on a bond, which he is bound by law to take, proves itself. *Ibid. Ibid.*

II. APPEAL BONDS.

18. The surety on an appeal bond is liable, although no execution issued, nor any demand made on his principal. Bryan vs. Cox, iii. n. s. 574.

19. Executors cannot be received in their private capacity on an appeal bond, taken from a judgment given against them, which binds them in their individual capacity.

Lafon vs. Testamentary Executors of Lafon, ii. n. s. 571.

20. An appeal bond, which states that the appeal has been taken in a suit, instead of from a judgment, is not defective. Des Boulets vs. Gravier, i. n. s. 420.

21. It is not necessary that an appeal bond should be signed by the appellant. Doane vs. Farrow, x. 74.

22. The plff. appellant may give the bond of two individuals for his prosecuting the appeal: it is not necessary that he should give his own. Richardson vs. Terril, ix. 1.

III. BAIL BOND.

23. Bail bond given by a person held to bail, on an affidavit, in which there are some inaccuracies, will not be set aside, if the affidavit be otherwise sufficiently certain and explicit. Turcas vs. Rogers, ii. n. s. 655.

24. The assignment of a bail bond need not be proved, when the general issue is not pleaded, nor the assignment denied. *Kirkman* vs. *Wyer*, x. 126.

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25. A bail bond taken under the act of 1808, need not be assigned by the sheriff: one taken under the act of 1805 must. Seympeyrac vs. Cable, x. 361.

IV. CUSTOM-HOUSE BONDS.

- 26. In bonds given at the custom-house, a consignee is considered as owner. Hewes and al. vs. Pierce, i. n. s. 357.
- 27. The persons to whom the goods really belong, contract no debt to the United States, when the consignee enters and bonds them. *Ibid. Ibid.*
- 28. The landlord's lien is of a higher nature, than the claim of the U. States on custom-house bonds. Jackson vs. Oddie, ii. n. s. 555.

Vide Attachment, 15. Auctioneer, 4. Executor, 2. Surety.

BOOKS AND PAPERS-PRODUCTION OF.

1. A party may be compelled to produce his books of accounts. Godel vs. M'Lanahan, ii. n. s. 435.

BOUNDARY,

1. If a grant for land on both sides of a stream call for the line of another tract as its upper boundary, it does not essentially follow, that such a line is the limit on both sides of the stream, when the contrary is shewn by proper evidence.* Meaux's Heirs vs. Breaux, x. 364.

2. The front lots on Levee street, having been extended by encroachment on said street, do not lose their original back line. Riviere vs. Spencer, ii. 79.

Vide Land. New-Orleans, 7. Rapides. Territory of Orleans.

CANAL CARONDELET.

1. Whether the city of New-Orleans may drain its waters in the Canal Carondelet? Orleans Navigation Co. vs. Mayor and al. of New-Orleans, ii. 10, 214.

CA'. SA'.

1. A defendant confined on it, cannot be discharged on an application ex parte, although the plff. in the execution neglect to make the necessary advance for his support. Dodge's Case, vi. 569.

^{*} See the case of Meuillon vs. Overton, xii. 311, in which this subject is considered. The case turned on matters of fact.

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2. If he procure his discharge therefore on an habeas corpus, without notice to the plff. the latter may appeal.*

Ibid. Ibid.

Vide Agent, 4. Courts of Justice Generally, 1. Ex-

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CARRIER.

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1. If the master of a steam-boat fail to deliver goods shipped, he is responsible for the invoice price. Frisby vs. Sheridan, iii. n. s. 242. Ames and al. vs. Reed, ii. n. s. 236.

2. If the master of a steam-boat leave behind the goods of a freighter, the latter has a right to demand their value, and is not bound to wait till they be brought by the next trip. Frisby vs. Sheridan, iii. n. s. 242.

3. Whether a sale by a common carrier vests the property of the goods in the purchaser? M'Neil and al. vs. Coleman, viii. 373.

4. The liability of a carrier does not commence, till the goods are delivered to him. Williams vs. Peytavin, iv. 304.

5. The owners of a steam-boat destroyed by fire, are

^{*}By the 1st section of the Act of 1820, entitled "An Act for the relief in certain cases of persons in confinement," it is provided that, "no debtor shall be kept in jail on a ca.' sa.' unless the plaintiff or his agent pay \$3.50, weekly, in advance to the jailor for his support; and in case of neglect, the jailor may of his own accord set the debtor at liberty." And by the 39th section of the Act of 1817, relative to insolvent debtors, it is provided that, "no free girl or woman shall be imprisoned for debt, unless she be a public trading women."

not liable to the freighters, if it appear that proper diligence was used. Hunt vs. Morris and al. vi. 676.

CERTIFICATE.

Vide Agarc. 4. Course of Juries Generality L.

TUREST LATE DEBROKEN-COMPLYAND

- 1. The certificate of the recorder of mortgages, is legal evidence. Hanna vs. His Creditors, xii. 33.
- 2. The certificate of a judge when a cause is tried upon written documents alone, may be made at any time so long as his memory serves him. Girod vs. Perroneau's Heirs, xi. 224.
- 3. The certificate of a parish judge that a sheriff's bond has been executed with the consent of the justices, is evidence that they approved the sureties. Whitehurst vs. Hickey and al. iii. n. s. 589.

4. It is not of the province of the judge a quo to certify what transpires on the trial. Mitchel vs. Jewel, x. 645.

5. The judge a quo cannot, after the record comes up, certify facts which make part of the statement. Ibid. Ibid. Syndies of Hellis vs. Asselvo, iii. 201.

6. The judge's certificate cannot control or eke out the facts appearing on the record. Wood and al. vs. Lewis, i. n. s. 594.

- 7. A certificate that the record contains all the material testimony is sufficient. Gayoso de Lemos vs. Garcia, i. n. s. 324.
- 8. When a suit is tried entirely on documents, this fact should be certified by the judge and not by the clerk. Millon vs. Delisle, ii. n. s. 239. Moulon vs. Brandt and al. Syndics, x. 669.

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act rk. 9. A certificate of a record of judicial proceedings in another state, ought to contain intrinsic evidence of the official capacity of the person who certifies it. Kirkland vs. Smith, ii. n. s. 497.

10. One who has been a justice of the peace cannot certify proceedings theretofore had before him. Gaillard vs. Anceline, x. 479.

11. A judge cannot certify after judgement, that the record contains all the matters on which the cause was decided, unless it appear that it was tried upon written documents. Conway and al. vs. Chinn, iv. n. s. 491.

Vide CLERKS OF COURTS, 5. JUDGES. DEPOSITION, 8.

BILLIES.

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1. A certiorari will be granted, if it be shewn that the whole testimony has not been transmitted. Hooper vs. Martineau, v. 668.

CESSIO BONORUM.

1. The law in force in this country, at the change of government, respecting the cessio bonorum, is not repealed by the constitution of the United States. Blanque's Syndies vs. Beale's Executors, i. n. s. 427.

- 2. A cession stays proceedings before and after judgment. Syndies of Bermudez vs. Ibanez & Milne, iii. 17.
- 3. A. dest. in jail cannot make a cession under the Civil Code. Simonton's Case, ii. 102.
- 4. Whether it can be made by a British certificated bankrupt? Meeker vs. His Creditors, i. 68.
- 5. A dishonest debtor is not entitled to a cessio bonorum.

 Brown's Case, i. 158.

Vide BANKRUPTCY. INSOLVENT, 2. RESPITE. SURRENDER.

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CHECKS.

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1. If there be a standing account between the parties, and one of them produce his own check receipted by the other, he will be entitled to a credit, unless it be shewn that it was given for a distinct claim. Joublanc's Executor vs. Delacroix, v. 477.

CITATION.

1. A citation need not be in the name of the state.—
Bludworth vs. Sompeyrac, iii. 719.

2. An alias citation may be taken after an irregular service of the first. Lafon vs. Riviere, vi. 1. Same vs. Same, v. 500.

3. Service at the last place of residence is bad. Ireland

vs. Bryan and al. iii. n. s. 515. Baldwin vs. Martin and al. i. n. s. 519.

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4. A deft, is not regularly in court by service on an attorney, appointed by the judge to defend him. Holliday vs. M'Cullough and al. iii. n. s. 176.

5. Appearing, pleading and contesting a suit on other grounds than the want of a citation, will cure the want of it. Weimprender's Syndics vs. Weimprender and al. xi. 20.—Debuys and al. vs. Johnson, iv. n. s. 286.

6. The appearance of an insolvent to the proceedings of his creditors against him, and contesting their validity, cure the want of a citation. Dyson and al. vs. Brandt and al. ix. 493.

7. The return of a citation cannot be explained by parol—not even by the sheriff or his deputy. Skilliman vs. Jones, iii. n. s. 686.

8. If the appellant obtain the judge's order for an appeal before the expiration of the two years allowed by statute to appeal in, the citation may be served afterwards. Baldwin vs. Martin and at. i. n. s. 519.

9. If the sheriff in copying a citation, insert words not in the original, this will not vitiate it. Herman vs. Sprigg, iii. n. s. 190.

10. Whether the citation of appeal against the state, served on the attorney general, be well served? State vs. Montegut and al. vii. 449.

11. Citation may issue after process of attachment be set aside. Sompeyrac vs. Estrada, viii. 722. Pavie and al. vs. Same. Ibid. 724.

12. In such case the plff. is entitled to a judgment by default, at the expiration of the delays after service of citation. *Ibid. Ibid.*

- 13. Service of citation of appeal upon the attorney of the appellee, is not good. Leglise vs. His Creditors, iv. n. s. 238.
- 14. In such case the acknowledgment of the attorney of service is also bad. *Ibid. Ibid.*
- 15. In an action against a sheriff for not returning process, if a writ of sequestration issued, the presumption is, that citation did also issue. Dupuy vs. Barlow, iv. n. s. 239.*

Vide Attachment, 16. Garnishee, 10. Practice, 98, 107, 108. Sheriff. Arrest.

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CITIZENSHIP.

The sainty of a citation cannot be explained by as

1. Bona fide inhabitants of the territory acquired citizenship by its admission into the union. United States vs. Laverty and al. iii. 733. Desbois' Case, ii. 185.

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CIVIL CODE.

- 1. Many parts of it apply to commercial cases. Brown and al. vs. Duplantier, i. n. s. 312.
- 2. The re-enacting in the Civil Code the general provisions in the ancient laws of the country, does not repeal the exceptions with which the general rule was limited. Miller and al. vs. Mercier and al. iii. n. s. 236. Herman vs. Sprigg, Ibid. 199.

^{*} See note under the head " Petition."

CLAIM. HOX

1. A claim unsupported by proof, will be disregarded. Grain vs. Robert, iii. n. s. 145.

CLASSIFICATION.

1. Classification may be ordered before payment by the beneficiary heirs. Cox vs. Martin's Heirs, xii. 361.

collainen. Rysner and at vo. Vigure, Evanor and al. St. 121;

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1. The assistance of the attorney general is not necessary in the prosecution or removal of a clerk. State of Louisiana vs. Winthrop, Clerk, &c. ii. n. s. 527.

2. "Frequent intemperance" and "habitual indolence," are too general charges in such a case, and evidence cannot be received to support them. Same vs. Same. Ibid. 530.

3. A clerk will not be removed for having acted incautiously, if he has thereby occasioned injury to no one.—

Ibid. Ibid.

4. He will be removed if he procure the means of producing an abortion. State vs. Bell, ii. n. s. 683.

5. He cannot certify the contents of a paper in his office: he must give a transcript of it. Smoot and al. vs. Russell, i. n. s. 522.

Vide MANDAMUS.

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COHABITATION.

1. If a man and woman contract to carry on business together, their subsequent cohabitation does not affect her rights. Viens vs. Brickle, viii. 11.

COLLATION.

i. Classification may

ACHT ATHTIES.

- 1. When a father sells property to one of his children at a very low price, the advantage conferred is subject to collation. Bossier and al. vs. Vienne, Curator and al. xii. 421.
- 2. But the difference of price between what the vendee sells the property for, after a lapse of years, and that he paid for it, will not suffice to establish the fact, that the sale was below the real value. *Ibid. Ibid.*
- 3. Grand-children, coming to the partition of their grand-father's estate with uncles and aunts, are not obliged to collate an onerous obligation due by their deceased father. Destrehan vs. Destrehan's Ex's, iv. n. s. 557.

natibe received to appare them. Superior science, Seel-1700.

COLORED PERSONS.

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- 1. Colored persons are presumed to be free. State vs. Cecil, ii. 208. Adelle vs. Beauregard, i. 183.
- 2. Negroes are presumed to be otherwise. Adelle vs. Beauregard, i. 183.

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COMMUNITY OF GOODS.

1. If a couple married in Hispaniola, and in community of goods remove to Charleston, and the wife die, a community will not be continued between the husband and children. Murphy's Heirs vs. Murphy, v. 83. Gale vs. Davis' Heirs, iv. 645.

Vide MARRIAGE, 2. WIDOW.

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1. Conditions precedent are known to our laws. Cornell and Wife vs. Hope Ins. Company, iii. n. s. 223.

CONFESSION.

Vide EVIDENCE.

CONGRESS.

Vide TERRITORY OF ORLEANS. CONTRACT, 5.

CONSIDERATION.

1. A promise, in consideration of the governor being prevailed on by the promisee to appoint the promisor, is not binding. Faurie vs. Morin's Syndies and al. iv. 39,

Hiller in 1945.

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Vide CONTRACT.

CONSIGNEE.

1. If the consignor desire that the sale of the goods be not delayed if on their arrival a certain price can be obtained, and he afterwards draw for the nett proceeds, and the consignee sell below the price mentioned, he is not liable for damages. Briggs and al. vs. Ripley and al. vii. 57.

2. A consignee who receives the goods, is liable for

freight. Smith vs. Flowers and al. vi. 12.

3. A consignee may sue for injury done to goods. Morgan vs. Bell, iv. 615.

Vide Agent, 29. Attachment, 32. Bonds, 26, 27. Bills of Lading.

CONSOLIDATION.

1. If cases be consolidated, and distinct verdicts and judgments be given in each, the supreme court cannot con-

sider them as consolidated. Esteve vs. Rochon. Montreuil vs. Jumonville. Rochon vs. Montreuil, iv. 481.

2. When cases are consolidated, the effect of the consolidation is, that the cases are to be considered as if the facts of both petitions were introduced in one or several counts, and those of the two answers put together in one. Offut's Heirs vs. Robents and al. xii. 302.

3. On suits consolidated, but one judgment can be regularly given. *Ibid. Ibid.*

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Vide PRACTICE, 127, 128, 5 and to story and

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CONSTABLE.

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1. A constable selling land under an execution, must advertise it in the same manner as the sheriff. Reeves vs. Kershaw, iv. 513.

CONSTITUTION.

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Vide Ex Post Facto Law. Constitutional Law. Su-

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· CONSTITUTIONAL LAW.

1. The constitution began to be binding on the people

and all the officers of government, as soon as the state was admitted into the union. Bouthemy and al. vs. Dreux and al. x. 1.

- 2. From that moment judicial proceedings were to be preserved in the language in which the constitution of the United States is written. *Ibid. Ibid.*
- 3. A law is not unconstitutional, which provides means for recovering debts due before its passage. Police Jury vs. M Donogh, vii. 8.
- 4. The provisions of the constitution did not extend to the temporary government established by the schedule. Dufour and al. vs. Massicot and al. iii. 289.
- 5. The schedule and the permanent government were distinct and separate. Bermudez vs. Ibanez, iii. 3.
- 6. The constitution is not violated by an act suspending legal proceedings during an invasion. Johnson vs. Duncan and al. Syndies, iii. 530.
- 7. The delay created in liquidating the affairs of a bankrupt does not violate the constitution of the United States. Chiapella vs. Lanusse's Syndics, x. 454.
- 8. The appointment of syndics in the French language, in the proceedings before the notary, is unconstitutional, and not cured by the homologation of the proceedings.* Viales' Syndics vs. Gardenier and al. ix. 324.
- 9. The maxim actor sequitur forum rei is a part of the public law or law of nations. Morris vs. Eves, xi. 730.
- 10. A tax on a parish to pay a debt due by the state, is not unconstitutional. Le Breton vs. Morgan, iv. n. s. 138.

Vide Acts of Assembly, 6. Award, 2. Cessio Bonorum. Supreme Court. Ex Post Facto Law. Family Meeting.

^{*} See the Act of the 16th March, 1822, on this and other subjects.

HABEAS CORPUS. INSOLVENT, 2. ISSUE. JUDGES. JUDG-MENT. JUDICIARY. ORLEANS NAVIGATION COMPANY. PRACTICE, 14, 22. PURCHASER, 3. RESPITE.

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CONSTRUCTION.

- 1. If a clause be susceptible of two constructions, it ought to be taken in that in which it will have some effect, rather than in that in which it will have none. M'Micken vs. Stewart, x. 571.
- 2. All regulations made under pretence of public good, which interfere with rights of individuals, should be strictly pursued. Bouligny vs. Dormenon and al. ii, n. s. 460.

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CONTEMPT

- 1. A parish judge cannot punish as for a contempt, a person disturbing him while acting as sheriff. Detournion vs. Dormenon, i. 137.
- 2. Written interrogatories are not necessary in every case of contempt. Territory vs. Thierry, i. 101.
- 3. A contempt cannot be purged by denying an ill intention, when the facts manifested it.* Territory vs. Nugent, i. 107.

Vide ATTORNEYS, 7. COURTS OF JUSTICE GENERALLY, 2.

^{*} See the Act of the 27th March, 1823, relative to contempts.

CONTINUANCE.

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1. A continuance should never be granted on an allegation of a want of testimony, unless its materiality be shewn, as well as diligence to obtain it, and a hope of its being obtained. Lafon's Executrix vs. Gravier and al. i. n. s. 243.

2. After a trial is gone into, and evidence heard, it is too late to pray for a continuance. Rousseau vs. Henderson and

al. xii. 635.

3. A cause will be continued on account of the indisposition of the counsel who intended to argue it, although there is another counsel engaged. Barry vs. Louisiana Ins. Co. xii. 484.

4. A party praying a continuance need not state the fact

to be proved. Perillat vs. Tiffany, ii. 134.

- 5. A continuance will be denied on a strong affidavit if suspicious circumstances appear. Territory vs. Nugent, i. 108.
- 6. A continuance will be granted, although the plff. offer to admit that the witness would swear to a certain fact.

 Larrat vs. Carlier, i. 144.

Vide PRACTICE. And a sport of the world to be to talk the

CONTRACT.

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1. In a sygnallagmatic contract, the dissolving condition is always understood; but it must be sued for—and a delay may be granted to the deft. according to circumstances. Turner vs. Collins, ii. n. s. 605.

2. If a party refuse to comply with his part of the contract, the adverse party may decline his. The subsequent conduct of the former will not revive the obligation of the latter. Byrd vs. Craig, i. n. s. 625.

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3. Accident or overpowering force does not exonerate from the performance of an aleatory contract. Henderson vs. Stone, i. n. s. 639.

4. A contract which is to be reduced to writing, is not complete until the writing is made and signed. Des Boulets vs. Gravier, i. n. s. 420.

5. The meaning of the word "dollars," in a contract, must be sought for in the acts of congress. Veech vs. Grayson, i. n. s. 133.

6. Contracts should be expounded according to the law of the country in which they were made. John Brown and al. vs. Richardsons, i. n. s. 202. Evans and al. vs. Gray and al. xii. 475. Vidal vs. Thompson, xi. 23. Morris vs. Eves, Ibid. 730. Lynch vs. Postlethwaite, vii. 69. Ferguson vs. W. & D. Flower, iv. n. s. 312. Ory vs. Winter, iv. n. s. 277. Chartres vs. Caines and al. iv. n. s. 1.

7. But must be enforced according to the regulations of the country in which the suit is brought. John Brown and al. vs. Richardsons, i. n. s. 202. Evans and al. vs. Gray and al xii. 475. Morris vs. Eves, xi. 730. Lynch vs. Postlethwate, vii. 69.

8. If one of the parties refuse to sign a contract, it is not binding on others who have already affixed their signature thereto. Wells vs. Dill, i. n. s. 592.

9. Though in a contract governed by the common law, relief may be had by suit only, it may be had here by plea. Evans and al. vs. Gray and al. xii. 475. Le Blanc vs. Sanglair and al. xii. 402. Morris' Assignee vs. King and al. xii. 261.

- 10. A contract for the sale of a slave must be reduced to writing; but if the slave be delivered on trial, parol evidence may be received to shew under what circumstances. Nicholls vs. Roland, xi. 190.
- will avoid a contract. Bradford's Heirs vs. Brown, xi. 217.
- 12. A party who has carried his pollicitation into effect and delivered the thing, cannot object that his offer was not accepted. *Ibid. Ibid.*
- 13. A building contract must be registered according to the provision of the act of 1813. Jenkins vs. Nelson's Syndies, xi. 437.
- 14. A person is not bound by a notarial contract, which he did not subscribe. Lombard vs. Guilliot and Wife, xi. 453.
- 15. Marriage contracts not recorded under the act of 1813, do not affect third persons. Lafarge vs. Morgan and al. xi. 462. De Armas and Wife vs. Hampton. Ibid. 552.
- 16. If A deliver his boat to B. on his promise to pay two dollars per day, or two hundred dollars if she be lost, or he chooses to keep her, the latter sum will discharge the obligation of B. at any time before or on a demand. Boniol and al. vs. Henaire and al. x. 357.
- 17. A contract by which a party gives a quantity of cattle, and all the land he has in consideration of the promise of another to support him, is valid. Vick ys. Deshautel, ix. 15.
- 18. If A. contract with B. to do a certain thing, and fail, C. cannot maintain an action on the contract, on the ground that the knowledge of it induced him to contract with B. Gales' Heirs vs. Penny, ix. 212.

19. A member of an unincorporated company is bound in solido for its contracts. Lynch vs. Postlethwaite, vii. 69.

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20. A parol contract cannot affect land, except in case of a lease. Castanedo vs. Toll, vi. 557.

21. If one contract to conduct a newspaper for a given time, and quits it before the expiration thereof, because the owner insists on having a piece printed in it which he disapproves, he cannot recover payment for the time during which he conducted the paper. Mortmain vs. Lefaux, vi. 654.

22. An obligation to deliver a quantity of cotton is not discharged by the nominal sum in money, which the parties intended to discharge by the delivery. Williams vs. Gilbert, vi. 553.

23. A sum stated in livres in a contract entered into in Hispaniola, does not mean livres tournois. Murphy's Heirs vs. Murphy, v. 83.

24. If a lot be aliened for a price which is to remain with the vendee at interest, with a stipulation that in case of his insolvency, he shall be considered as a lessee—until then, the contract is a sale. Mayor, &c. vs. Duplessis, v. 309.

25. If an undertaker agree to do "all the joiner's work necessary" in a theatre, ornamental work will be included in his contract. Sauzeneau vs. Delacroix, v. 386.

26. If on a stipulation, that a certain part of the price shall be paid as the work shall advance, in a given proportion, and payments be made accordingly, this shall not prevent the sufficiency of the work being questioned.—

Delacroix vs. Orleans Navigation Co. v. 507.

27. The promise of a person who has purchased a ves-

sel, subject to the lien of a fi. fa. that she shall be sold after her arrival at New-York, to satisfy the execution, is not a nudum pactum. Duffy vs. Townsend and al. ix. 583.

28. A contract for the sale of minor's property is null, if the formalities of law are not complied with. Chesneau's

Heirs vs. Sadler, x. 726.

29. No one has such an interest in the renewal of a license to keep a gaming house, as may be the object of a contract. Sacerdotte vs. Matossy, iv. n. s. 26.

30. An obligation to A. which B. the obligor promises to settle with C. is not discharged by shewing in a suit of A. against B. that C. is indebted to B. Fluker vs. Turner, iv. n, s. 551.

31. In an alternative obligation, the choice is with the party promising. Galloway vs. Legan, iv. n. s. 167.

32. A receipt to a debtor in solido, for his part, extinguish-

es the contract. Baldwin vs. Gray, iv. n. s. 192.

Vide Action, 2. Acts, 3, 4. Agent, 16. Agreement, 8, 9. Assignment, 2. Cohabitation. Consideration. Solidarity. Creditors, 1, 2. Deposit. Distribution. Exchange—Contract of. Laws. Lien. Minors. Notarial Acts. Penalty. Planter. Construction. Practice, 6. Sale. Ship Owners. Simulation. Stipulation. Vendor and Vendue. Written Contract. Privilege. Condition.

CONTRIBUTION.

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1. Contribution cannot be sued for by a joint trespasser. Meunier vs. Duperron, iii. 285.

CONVEYANCE.

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- 1. A conveyance which gives all the property of a debtor to one creditor, who has no legal preference, is fraudulent both on the part of the debtor and creditor. Hodge vs. Morgan, ii. n. s. 61.
- 2. If such a conveyance be attacked as fraudulent, it lies on the alience to shew that there was other property. *Ibid. Ibid.*
- 3. A conveyance on the eve of bankruptcy to secure one creditor to the prejudice of others, is fraudulent and will be set aside. Henderson and al. vs. Morgan, iv. n. s. 649.

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CORPORATION.

- 1. A corporation is suable only by the name given it in its charter. Hill, use of Williams vs. Tessier, ii. n. s. 539.—Police Jury vs. M'Donogh, vii. 17.
- 2. Corporations of other states may sue in this state. Williamson and al. Syndics vs. Smoot and al. vii. 31.
- 3. The creditors of a stockholder cannot sell his share in any specific part of the property of the corporation. *Ibid. Ibid.*

COSTS.

1. If a debtor deny a debt, which he afterwards admits, he shall pay costs, although the judgment authorizes him to withhold payment till he receives security. Harang vs. Le Breton, ii. n. s. 68.

2. The costs of a suit include all the charges which the law allows. Lafon's Ex'rs. vs. Riviere's Executrix, i. n. s. 448.

3. Costs may be given without being demanded in the petition, or a prayer for general relief. Thompson vs. Chretien and al. xii. 250.

4. They are accessary to a judgment, and a jury cannot allow them to a deft. against whom a recovery is had.—Walsh vs. Collins, xi. 558. Bolton and al. vs. Harrod and al. x. 115. Nugent vs. Delhomme, ii. 307.

5. Tax costs of every kind are priviledged. Turpin vs. His Creditors, vii. 44.

6. If a plff. sue a curator in the district court, have judgment, and the deft. appeal, the plff. shall pay costs in both courts, as he committed the first error. Sanders vs. Highland's Executrix, ii. n. s. 238.

7. If the plff: reside in the territory, but not in the district, the proceedings will not be stayed till he give security for costs. Weeks vs. Trask. ii. 247.

8. The reversal of the judgment of an inferior court, gives costs to the appellant. Bouthmy's Heirs vs. Dreux's Syndies, iii. n. s. 393.

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- III. Courts of Probates.
- IV. Court for the Parish and City of New-Orleans.
- V. Courts of Justice generally.

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- II. When it may examine all the merits of a cause.
- III. When it will not pass on the merits of a cause.
- IV. Verdicts of Juries-how regarded.
- V. Causes submitted to a Jury on special facts.
- VI. Judgments of Courts below. VII. Judgments containing no reasons, nor reference to any law.
- VIII. What errors may be assigned in the Supreme Court.
 - IX. Defects and irregularities, which cannot be objected to in the Supreme Court.
 - X. Formal Imperfections.
 - XI. Proceedings on Bills of Exception.
 - XII. Remanding causes to Inferior Courts.
- XIII. When causes will not be remanded.
- XIV. Re-hearing.

I. SUPREME COURT.

1. The supreme court has no general controlling power over the other courts. State vs. Judge Esnault, xii. 488.

- 2. Its decisions are evidence of the law. Breedlove and al. vs. Turner, ix. 353.
- 3. It is bound to dissolve doubtful questions of law, and cannot refer them to the legislature. Ibid. Ibid.
- 4. It has power to decide differently from a jury, but it is one which it exercises with caution. Bradford vs. Wilson, xi. 188. Reano vs. Mager, xi. 637. Dunn and Wife vs. Duncan's Heirs, x. 671.
- 5. The supreme court can on an appeal, in which a cause comes up, with all the evidence and facts accompanying it as required by law, even when the jury has in the first instance found a general verdict, enquire into both the facts and law of the case, and affirm or reverse the judgment of an inferior tribunal, as justice may require. Crawford vs. Louisiana State Bank, i. n. s. 218.
- 6. But when the case is brought up on bills of exceptions alone, taken to opinions on points of law, it can only enquire into the pertinence to the issue, as it appears by the pleadings. *Ibid. Ibid.*
- 7. It may relieve on the refusal of a new trial, but a very clear case must be made out to induce it to do so. Sanchez and Wife vs. Gonzales, xi. 207. Hatch vs. Gillet, viii. 169.
- 8. The rules of an inferior court cannot be noticed in the supreme court, unless a copy of them be sent up with the record. Butler vs. De Hart, i. n. s. 184.
- 9. If a petition for an injunction be dismissed for want of equity appearing on the face of it, the supreme court cannot take notice of evidence said to have been introduced. Potter vs. Richardson, i. n. s. 281.
- 10. In remanding a cause when it does not clearly appear which of the claimants has a right to the money re-

covered, the supreme court will decree that it be paid into court. Harrod and al. vs. Paxton, xi. 549.

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11. When the proof is not conclusive, and the supreme court is called upon to decide on which side it preponderates, it must draw such conclusions as are best supported by the evidence produced. Wooters vs. Thompson, x. 674.

12. A trial by jury cannot be had in the supreme court.

Sundies of Brooks vs. Weyman, iii. 9.

13. No new evidence can be received in the supreme court, though discovered since the appeal. Board vs. Poydras, iii. 505.

14. If evidence appear on the record which did not make a part of the testimony below, it cannot be noticed in the supreme court. Kenney and al. vs. Dow, x. 602.

below, if the parties agree thereto in lieu of a statement. Vernot vs. Yocum, iii. 406.

16. If a judgment be reversed, and there be no statement of facts, the supreme court cannot proceed to judgment on issues found generally. Chedoteau's Heirs vs. Dominguez, vii. 490.

17. The supreme court will test the opinion of the judge a quo in admitting a witness according to the circumstances of the case, at the time it was given. Piernas vs. Ukuque's Syndies, vi. 577.

18. When testimony is taken down under the act of 1817, the supreme court will presume, if there be no suggestion to the contrary, that the record contains all the evidence. Barnwell vs. Harman. Same vs. Kumbel, vi. 722.

19. Although the supreme court think that the inferior court ought to have charged the jury, as the appellant

prayed, or ordered a new trial, if the whole case is before them, they will not remand the cause. Abat vs. Doliolle, iv. 316.

20. On the dismissal of an appeal, the supreme court can issue no mandate to the inferior court to execute its judgment. Louisiana Bank vs. Hampton, iv. 298.

21. If a party to an appeal die during its pendency in the supreme court, and this be suggested on the record, his representatives may be made a party in his stead.—
Olinde vs. Gougis, iv. 96.

22. The supreme court will take the value of the matter in dispute as stated, unless contradicted. Lefevre vs. Broussard, ii. 135.

23. It the testimony of a witness contain direct and palpable contradictions, the supreme court will reject it altogether. Ferrer vs. Bofil, xi. 234,

24. If a jury be prayed for below, the facts shall not be tried by the court above, Bayon vs. Rivet ii. 148.

25. When the court is equally divided, there cannot be any judgment. Read vs. Bailey, ii. 314. Orleans Navigation Co. vs. Mayor of New-Orleans. Ibid. 46. Moreau vs. Duncan, i. 99.

26. If the proceedings on which a judgment pleaded in bar, be so confused that the facts cannot be well ascertained, the case will be tried on its merits. Breaux vs. Meaux, v. 214.

27. The supreme court cannot act on evidence taken down by the clerk in a case in which he was not bound to do so. Wall vs. Hampton and al. ii. n. s. 361.

28. Neither the constitution of the state, nor the acts of the legislature under it, organizing the court of appeals,

and establishing rules of procedure therein, will authorize the supreme court to admit new pleas, or new evidence in any suit. Boudreau vs. Boudreau, x. ii. 669.

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- 29. A motion in the supreme court, to dismiss an appeal, must be made in limine litis. Duncan's Ex'rs. vs. Poydras' Ex'rs. iv. n. s. 359.
- 30. The constitution does not authorize the supreme court to take cognizance of any case, when the object in dispute is below the value of three hundred dollars.—

 M'Rae vs. Bushnell, iv. n. s. 483.
- 31. Whether the legislature can confer such power?

II. WHEN IT MAY EXAMINE ALL THE MERITS OF A CAUSE.

- 32. The reversal of a judgment on any point, authorizes the supreme court to examine the whole case. Miller and al. vs. Mercier and al. iii. n. s. 229.
- 33. Although in doubtful cases the supreme court yield its conclusions to those of a jury in a matter of fact, it cannot do so, when the evidence produces an entirely different conviction. *Mitchel* vs. *Jewel*, x. 651.

III. WHEN IT WILL NOT PASS ON THE MERITS OF A CAUSE.

34. If a suit be wrongfully dismissed for want of jurisdiction, the supreme court will not pass on its merits. Martin vs. Heirs of Martin and al. iii. 48.

IV. VERDICTS OF JURIES—HOW REGARDED.

35. When therevidence leaves the fact doubtful, the su-

preme court will not disturb a verdict of two juries to the same effect. Pratt vs Flower and al. iii. n. s. 452.

36. A verdict will not be disturbed, unless it evidently appear contrary to evidence. Cole vs. Louisiana Insurance Company, ii. n. s. 165.

37. In matters emphatically proper to be tried by a jury, the supreme court cannot take upon itself to decide the case on other evidence than that laid before the jury. Bowman vs. Flowers, ii. n. s. 267.

38. The supreme court will disregard the verdict of a jury, if it be evidently contrary to law. Dressen vs. Cox, ii. n. s. 631.

39. It will not be bound by a verdict, when the presumption is very strong, that it does not meet the justice of the case. Mayor vs. Griffon and al. iii. n. s. 653.

40. The opinion of a jury always prevails in the supreme court on a question of a fraud; and if it be not clear that the verdict was founded on it, the cause will be remanded for a new trial. Baudin vs. Roliff and al. Robertson and al. Interpleaders, i. n. s. 165.

41. When questions of limit depend on matters of fact rather than on principles of law, the supreme court will not disturb the verdict of a jury, if it do not clearly appear contrary to evidence. Scott vs. Turnbull and al. x. 335.

42. If the evidence be not positive, the supreme court will not disturb the finding of a jury. D'Apremont vs. Peytavin, v. 323.

43. When the illegality of a contract is not pleaded, and does not appear from the evidence in support of it, if there be a verdict for the plff the judgment will not be disturbed, though some evidence of the illegality may result from a cross-examination of the plff's witnesses, or from the tes-

timony adduced by the deft. Harvey vs. Fitzgerald, vi. 530.

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44. The supreme court will disregard the verdict of a jury, if they find a fact of which there is not the least tittle of evidence. Offut's Heirs vs. Roberts and al. xii. 300.

y. CAUSES SUBMITTED TO A JURY ON SPECIAL FACTS.

45. If a case be submitted to a jury on special facts, the evidence submitted to them cannot be legally brought before the supreme court. Syndics of Weimprender vs. Trepagnier, ii. n. s. 559.

46. If a petition contain a charge of error and fraud, and the case be tried on special facts; if neither error nor fraud be noticed in the facts submitted, both charges will be considered as abandoned. Wall vs. Hampton and al. ii. n. s. 361.

VL JUDGMENTS OF COURTS BELOW.

47. If a party establish his right under a title, different from that set up, the supreme court will not disturb the judgment he has obtained, if it otherwise do complete justice. Wyer vs. Winchester, ii. n. s. 69.

48. The judgment appealed from on a question of fact, prevails in the supreme court, unless manifestly erroneous. Pascal vs. Caldwell and al. iii. n. s. 175. M'Intosh vs. Forstal and al. lb. 571. Bossier's Syndics vs. Belair and al. lb. 29. Boismarre vs. Jourdan, i. n. s. 304. Soubie's Executor vs. Beale and al. lb. 95. Evans vs. Richardson, xii. 30. Elishe vs. Voorhies. lb. 424. Rachel vs. St. Amand, viii. 363. Moore and al. vs. Angiolette, xii. 532. De Vanworth vs. Bouchon's

Heirs, ii. n. s. 536. Barrow vs. Stirling. Ib. 55. Curator of Latrobe vs. Sinnott. Ib. 580. Henderson vs. Beale's Curator, iv. n. s. 228. Jordan vs. White, iv. n. s. 626.

- 49. If a judgment appealed from be not incorrect in what it decides, the supreme court will not reverse it, although it does not do entire justice to the parties. *Pecquet and al.* vs. Golis, ii. n. s. 121.
- 50. The supreme court will not reverse the judgment below, if the case turn on the credit due to a witness, Morris vs. Hatch, ii. n. s. 491.
- 51. The judgment of an inferior court will not be reversed, when the evidence leaves the facts doubtful. Naba vs. Soubercase's Heir, iv. n. s. 493.

VII. JUDGMENTS CONTAINING NO REASONS, NOR REFERENCE TO ANY LAW.

- 52. The supreme court will reverse a judgment, which contains no reference to any law, nor any of the reasons upon which it is grounded. M'Kenzie vs. Havard, xii. 101. Millon vs. Delisle, ii. n. s. 239. Gray and al. vs. Laverty and al. iv. 463. Sierra vs. Slort, iv. 587. Denis vs. Bayon, vii. 446.
- 53. When the judgment is reversed for want of reasons, the supreme court may proceed to render such judgment as ought to have been given below. *Urquharts*, *Ex*'rs, &c. vs. *Taylor*, v. 200. *Poston* vs. *Adams*. *Ibid*. 272.
- 54. If a judgment do not contain the reasons upon which it is grounded, and a material erasure be on the statement of facts, without its being recognized and owned by the parties, and one of them insist that it was made without his consent, the case will be remanded. Walker vs. Smith and al. vii, 563.

VIII. WHAT ERRORS MAY BE ASSIGNED IN THE SUPREME COURT.

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55. Errors in law apparent on the record may be assigned in the supreme court, although there be neither statement of facts, special verdict, or bills of exception. *Denis* vs. *Cordeviella*, iv. 654.

IX. DEFECTS AND IRREGULARITIES, WHICH CANNOT BE OBJECTED TO IN THE SUPREME COURT.

- 56. If parol evidence in regard to immoveable property be admitted without objection in the inferior court, it cannot be objected to in the supreme court. Babineau vs. Cormier, i. n. s. 456.
- 57. A party who does not object to the judge's charge, cannot complain of it in the supreme court. Bayon vs. Vavasseur, x. 61.
- 58. If a paper be permitted to be read on the trial below, it cannot be objected to in the supreme court. Brown vs. Compton, x. 429.
- 59. Complaint that a special verdict was obtained without legal evidence, cannot be made successfully in the supreme court by a party who did not ask for a charge to the jury, a non-suit, or a new trial. Lazare's Executor vs. Pentavin, xii. 684.

X. FORMAL IMPERFECTIONS.

60. Formal imperfections in a petition do not prevent the supreme court from proceeding to judgment on the merits of a case. Dusman and al. vs. Rilieux, ix. 318.

- 61. The supreme court will not remand a case for irregularity in the form of proceeding, if justice can otherwise be done. Canez and al. vs. Schr. James M'Kinley and al. ii. n. s. 309.
- 62. After a full trial on the merits, the supreme court will feel much reluctance to remand a cause, on a technical objection. Livingston vs. Heerman, ix. 656.

XI. PROCEEDINGS ON BILLS OF EXCEPTION.

- 63. The supreme court cannot on a bill of exceptions, which is to a point of law, reverse a judgment of an inferior court for an erroneous decision on matters of fact. Shewell vs. Stone, xii. 388.
- 64. On a bill of exceptions, those objections alone are examined in the court above, which were made below. Pratt vs. Flowers, ii. n. s. 333.

XII. REMANDING CAUSES TO INFERIOR COURTS.

- 65. When a cause was tried by a jury below, and the judgment is reversed, it may be sent back for a new trial, although there be sufficient evidence for the supreme court to act on. Campbell vs. Miller, iii. n. s. 149. Same vs. Henderson. 16. 152.
- 66. If the verdict be manifestly against evidence, and an unsuccessful motion for a new trial be made, the supreme court will remand it for one. Brooking vs. Wade, iii. n. s. 513. Richardson vs. Louisiana Ins. Co. xi. 281.
- 67. If a cause be submitted to a jury on the condition that they may hear testimony during their retirement, but that they shall reduce it to writing; if they fail to write it down, the supreme court will remand the cause. Caulker vs. Banks, iii. n. s. 532.

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69. If the finding of a jury on facts be contradictory, the supreme court will remand the case. Syndics of Weimprender vs. Trepagnier, ii. n. s. 559.

70. If a judgment of the court of probates be bottomed on an alleged compromise, and reversed on the ground, that it did not legally take place, the supreme court will remand the case to be heard on its merits. Brown and al. vs. Brown's Ex'rs. ii. n. s. 441.

71. If the finding of a jury leave room to doubt, the supreme court will remand the cause. Cox vs. Wilson, i. n. s. 629.

72. If it appear that all the evidence was not taken down by the clerk, the supreme court will remand the cause, although the knowledge of the defect reaches it irregularly. Davis vs. Dancy and al. i. n. s. 589.

73. If the testimony taken render an important fact probable, which does not appear on the record, the supreme court will remand the cause to obtain it. M'Neill and al. vs. Glass and al. i. n. s. 263.

74. The supreme court will remand a cause to be tried de novo, when the justice of the case requires it. Coe and al. vs. Pannel and al. xii. 355. Dufour vs. Camfrancq, viii. 235.

75. When fraud is put at issue, and the supreme court thinks that the weight of evidence is against the verdict, it will remand the cause for a new trial. Bradford vs. Wilson, xi. 188. Bayon vs. Vavasseur, x. 69. Sloan and al. vs. Adams, iv. n. s. 365.

- ry, and evidence not very important in itself is admitted, which may have had influence on their minds, the supreme court will remand the case. Gaillard vs. Arceline, x. 481.
- 77. If the judgment appealed from, contain none of the reasons upon which it is founded, it will be reversed, and if the record do not contain the evidence, the supreme court will remand the case. Denis vs. Bayon, vii. 446.
- 78. A case will be sent back for a new trial, if justice appear to require that a fact of which there is presumptive evidence only should be fully proven. Laws and al. vs. Winter and al. viii. 170.
- 79. A strong case must be made out to induce the supreme court to remand a cause for a new trial, when no motion was made in the inferior court for one. Woolsey vs. Paulding, ix. 280.
- 80. If testimony be admitted without being sworn to, and be contradictory, the supreme court will remand the case for a new trial. Barry vs. Louisiana Ins. Co. xi. 202. Mager vs. Same. Ibid. 205.
- 81. If the judge a quo tell the deft, he had no need of introducing his evidence, as the plff's case was not proven, the supreme court will remand the case. Robertson vs. Lucas, xi. 187.
- 82. Every error of an inferior court will not induce the supreme court to remand the case. Caulker vs. Banks, iii. n. s, 532.
- 83. When the supreme court entertains doubts as to the facts of the case, it must remand the cause for a new trial. Robertson vs. Nott, ii. n. s. 122.
- . 84. If a party withheld proof in his possession, which he is not bound to produce, the court may remand the cause

for a new trial. Campbell vs. Henderson, i. n. s. 510. Same vs. Miller. Ibid. 514.

- 85. If there be a supplemental petition, and the judgment be on the original one, the suit will be remanded.—

 Lanusse vs. Massicot and al. iii. 40.
- 86. If the appellant was not a party to the original suit, and the facts on which his right of appeal rests, be denied, the case will be remanded to have them tested. Corporation vs. Paulding, iv. n. s. 614.
- 87. If the point really at issue be not contested in the court below, and the evidence be not satisfactory, the supreme court will remand the cause. Bailey vs. Robles and al. iv. n. s. 362.

XIII. WHEN CAUSES WILL NOT BE REMANDED.

- 88. If it appear that a cause has been as fully tried on its merits, as it would have been with an amendment, the supreme court will not remand it. Johnston's Ex'r vs. Wall and al. i. n. s. 541.
- 89. A case will not be remanded for an error on the trial which does not affect the merits. Morgan vs. Mitchell, iii. n. s. 576.
- 90. If a party did not ask for a new trial below, the supreme court will not grant him one, on the ground that the verdict is not according to the testimony. Morgan vs. Bickle and al. ii. n. s. 377.
- 91. Although the judge below gave an erroneous charge to the jury, the supreme court will not remand the case, if justice has been done. Miller vs. Pierce, iii. n. s. 284.
- 92. If the case turn principally on a question of fact, and, there be a verdict by the jury, and the plff, appeal

without moving for a new trial, the supreme court will not remand it for one. Allain vs. Cornaux and al. iii. n. s. 365.

93. If improper evidence be suffered to go to the jury, and it manifestly appear that they disregarded it, the supreme court will not remand the case on that account.—

Lazare's Ex'r vs. Peytavin, xii. 684. Johnson vs. Duncan and al's Syndics, v. 168.

94. The supreme court will not remand a case, which has been tried by a jury, for a new trial, when there is no contradiction in the testimony, and the decision depends on calculation alone. Johnston vs. Sprigg, xii. 328.

XIV. RE-HEARING.

95. The supreme court will not grant a rehearing on a technical objection, if points have not been filed agreeably to the rules of the court. *Mitchell and al.* vs. *Gervais*, ii. n. s. 570.

Vide Abatement, 2. Amendment, 3. Appellant and Appellee, 2, 3, 4. Bill of Exceptions, 11. Consolidation, 1. Identity. Interrogatories, 3. Practice, 85, 96, 113, 115.

II. DISTRICT COURTS.

- 1. The district courts are not bound by that part of a verdict, which requires that the execution be stayed: facts only are to be found by the jury—the law is to be applied by the court. Fortin vs. Blount, i. n. s. 183.
- 2. They are not wholly deprived of jurisdiction, ratione materia, in suits for the recovery of debts against a succession. Tabor vs. Johnson and al. iii. n. s. 674.

3. They have jurisdiction of a suit in which the heir at law claims the whole estate from one whom he alleges has no title. Crane and al. vs. Marshal, i. n. s. 577.

4. They cannot proceed in a suit, after a deft. has obtained a stay of proceedings in a parish court. Hummin vs. Jones, ii. n. s. 163.

5. They do not lose jurisdiction of a cause pending before them, when the deft. dies without leaving any property within the reach of a court of probates. Lecesne vs. Cottin, ii. n. s. 475.

6. In the court of the first district, no notice of trial is necessary. Sierra vs. Stort, iv. 587.

7. Saturday is not a trial day in the court of the first district. Ibid. Ibid.

8. If a plff. in execution send a writ to another parish, the district court for that parish has jurisdiction to issue an injunction, and try the questions arising on it. Lawes and al. vs. Chinn, iv. n. s. 388.

9. A district court in affirming the judgment of a court of probates, (dismissing a cause for want of jurisdiction) cannot pass on the merits of the case. Williams and al. vs. Spencer and al. iv. n. s. 77.

Vide AMENDMENT, 2, 4. SUPREME COURT. CURATOR, 1, 2. EXECUTOR, 24. HEIR, 1, 2, 3. HIGHWAY. HUSBAND AND WIFE, 1. WILL.

III. COURTS OF PROBATES.

AND REPORTS AND ADDRESS.

1. A court of probates has exclusive jurisdiction of claims against an estate administered for minor heirs.—

Baillio and al. vs. Wilson, iii. n. s. 73.

2. It has exclusive jurisdiction of claims against an estate, administered under the benefit of an inventory. Wilson vs. Baillio and al. iii. n. s. 74.

3. On the death of a dest. and the appointment of a curator, the cause ought to be transferred to a court of probates. Prentice and al. vs. Waters, iii. n. s. 522.

4. A court of probates ought not to order the balance in an executor's hands to be brought in and applied by the court to the payment of debts, legacies, &c. Lafon's Heirs vs. His Executors, iii. n. s. 707.

5. If the property of a succession be illegally sold, the action of warranty arising on it, cannot be brought in a court of probates. Montamat and Wife vs. Debon, ii. n. s. 392.

6. The purchaser of property at a sale of a court of probates, acquires it free from incumbrances. De Ende vs. Moore, ii. n. s. 336. Lafon's Ex'rs vs. Phillips and al. ii n. s. 225.

7. An irregularity in a sale by a court of probates must be complained of before the homologation of the curator's accounts. Lafon's Ex'rs vs. Phillips and al. ii. n. s. 225.

8. The courts of probates have exclusive cognizance of claims against vacant estates. Miles vs. Ford and al. ii. n. s. 439. Vignaud vs. Tonnacourt's Curator, xii. 229. Tabor vs. Johnston and al. iii. n. s. 682.

9. Although the court of probates for the parish and city of New-Orleans, have ordered the execution of a will, any person interested in having it set aside may bring suit in the district court. Bouthemy and al. vs. Dreux and al. x. 1.

10. Before the act of 1820, the court of probates had power to decree the exhibiting and filing of an executor's accounts, and a distringus was not the proper writ to compel him to do so. Casanovichi and al. vs. Debon and al. x. 11.

11. A court of probates cannot proceed to judgment on ex parte evidence. Dubreuil vs. Dubreuil, v. 475.

12. The jurisdiction of a court of probates extends over the acts of persons appointed under its authority, but not over claims against the estates which they administer. Abat and al. vs. Songy's Estate, vii. 274.*

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13. When an executor has become insolvent, the court of probates retains jurisdiction of an action against him for property in his hands belonging to the estate. Taylor vs. Hollander, iv. n. s. 535.

14. Aliter, where judgment is demanded for a sum of money. Ibid. Ibid.

15. A court of probates has jurisdiction of all cases that relate to the putting into provisional possession the heirs of an absentee. Donaldson and al. vs. Dorsey and al. iv. n. s. 509.

16. But it cannot try a question of title. Ibid. Ibid.

17. A court of probates has no jurisdiction, when the heirs of a succession claim property held under a title adverse to them and their ancestors. Harris, Tutor vs. M'Kee and al. iv. n. s. 485. Williams and al. vs. Spencer and al. lb. 77.

Vide DISTRICT COURTS, 2, 3, 5, 9. CURATOR, 6. MORT GAGES. PARISH JUDGE. PARTNERSHIP, 11.

IV. COURT FOR THE PARISH AND CITY OF NEW-ORLEANS.

- 1. The jurisdiction of the court for the parish and city
 - * Overruled. See point, under this head, no. 8, and 3 n. s. 682.

of New-Orleans, does not extend to contracts or torts originating out of the parish. Breedlove and al. vs. Fletcher, vii. 524, 714, and viii. 69.

- 2. In an action for a tortious conversion, it has jurisdiction, if the conversion be within the parish, although the goods came to the deft's hands out of it. Coit vs. Jennings, viii. 166.
- 3. No action can be brought in the parish court of the parish and city of New-Orleans, on a judgment rendered in the Alabama territory. Johnson vs. Dunwoody, vi. 9.
- 4. In the court for the parish and city of New-Orleans, if the cause of action is stated to have risen at the Bayou St. John, this will suffice.* Delisle vs. Gaines, iv. 666.

V. COURTS OF JUSTICE GENERALLY.

- 1. The law has pointed out the manner in which courts of justice in the state are to execute their judgments. It does not allow of the seizure of the person of the debtor, till it appear that no property of his is to be found. Lafon's Heirs vs. His Ex'rs iii. n. s. 713.
- 2. The order to pay money into court is only to be enforced by the attachment of the person: this violent measure should not be resorted to, till the party's visible property be exhausted. *Ibid. Ibid.*
- 3. The power of courts to enjoin their own writs does not depend on the nature of the property levied on. Syndics of Menard vs. Pierce and al. iii. n. s. 375.
- * By, an act of the 10th February, 1821, concurrent jurisdiction is given to this court in ALL CASES, with that of the district court for the first district.

4. An inferior court may set aside an order improperly granted by it. Shaw and al. vs. Thompson, iii. n. s. 392.

5. The courts of this state are not limited to the determination of questions of law: they may try issues of fact. Desdunes vs. Miller, ii. n. s. 53.

6. The courts of this state may, ex officiis, send a cause before referees. Spraggins vs. White's Ex'rs iv. n. s. 297.

Vide BILL OF EXCEPTIONS, 13. EXECUTION, 15. FOREIGN LAWS. INJUNCTION, 2. JURISDICTION. MARSHAL OF THE U. STATES.

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CREDITORS.

- 1. Creditors cannot attack the contracts of their debtors unless they be injured by them. Semple vs. Fletcher, iii. n. s. 382.
- 2. Hence they must shew that sufficient property does not remain to pay them. Ibid. Ibid.
- 3. They may use all legal means against their debtors in solido. Maxwell and al. vs. Gunn, ii. n. s. 140.
- 4. An attaching creditor loses his lien in case of the insolvency of the deft. Hanna vs. His Creditors, xii. 32. Scholfield and al. vs. Bradlee, viii. 495. Marr vs. Lartigue, ii. 89.
- 5. A creditor opposing the homologation of the proceedings against his debtor, must state specially the ground of his opposition, and is not allowed generally to allege irregularity. Desbois vs. Segher's Syndics, viii. 67.
 - 6. A creditor who procures a sequestration which is

followed by a cession, has no action for his costs, when the measure does not appear to have been advantageous to the mass. Rion and al. vs. Segher's Syndies, viii. 17.

7. A creditor has no right to interfere in a suit between his debtor and a third party. Brown and al. vs. Saul and al. iv. n. s. 434.

8. Creditors who sign a concordat, do not waive their right of contesting the claims of each other on the syndic's filing a tableau of distribution. Garidel vs. Fogliardi, iv. n. s. 432.

9. A mortgagee creditor may enforce his claim against a third possessor by an ordinary action. Verret's Heirs vs. Candolle, iv. n. s. 402.

10. The claim of a creditor of an insolvent to be paid by preference out of the proceeds of stock pledged to him, must be settled contradictorily with the creditors after the tableau is made out. Astor vs. Syndics of Saul and al. iv. n. s. 632.

Vide Assignment, 11. Bankruptcy, 4. Corporation, 3. Curator, 8. Forfeiture. Insolvent Lien. Partnership, 29. Practice, 2. Res Inter Alios Acta. Third Party. Witness.

CUMULATION.

1. If an insolvent be sued by a creditor, not on his bilan, the suit will be cumulated with the proceedings of the other creditors. Franklin Bank vs. Nolte and al. iv. n. s. 624.

Vide ACTION, 5. PRACTICE, 2.

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CURATOR.

- 1. A curator's sureties are snable in a district court. Martin vs. Heirs of Martin and al. iii. n. s. 48.
- 2. A curator is suable in a district court when ordered by the court of probates to pay a debt. Waters vs. Wilson and al. in. n. s. 135.
- 3. A curator who has given money to be laid out on an estate, may sue for it in his own name if it be not properly appropriated: in such case the defendant cannot set off a debt due him by the estate. Guibert vs. Herpin, iii. n. s. 395.
- 4. He is entitled to ten per cent. on the yearly interest on the sums in his hands. Plauche vs. Plauche, iii. n. s. 463
- 5. He may demand the estate of his intestate's son. Bradford's Curator vs. Beauchamp, iii. n. s. 473.
- 6. He is functus officio at the end of the year, and a court of probates has no longer jurisdiction over him. Johnson vs. Brown, iii. n. s. 601.
- 7. If a curator ad bona be appointed when all the heirs are present, although the appointment be illegal, he is answerable as their agent. Ware and Wife vs. Welsh's Heirs. x. 430.
- 8. If he sell as part of the estate, a slave, to which the deceased had only an apparent title, and which he was bound to reconvey, the real owner will be entitled to the proceeds of the sale, and will not be considered merely as a creditor of the estate therefor. Donaldson vs. Rust, vi. 260
 - 9. Whether the year and a day, allowed by law to the

curator of a vacant estate run in every case from the date of his appointment? Musson vs. Bank of U. S. vi. 707.

- 10. If a testator dispose of property, which he was bound to leave to his brothers and sisters, and appoint an executor himself, a defensor will be appointed to them, but not a curator till after a division. Johnson vs. Davidson, vi. 506.
- 11. A curator cannot be sued in a district court. Sanders vs. Highland's Curatrix, ii. n. s. 238. Vignaud vs. Tonnacourt's Curator, xii. 229.
- 12. If before the appointment of a curator, one of the applicants for it receive his debt, this will destroy his claim as a creditor. Rust vs. Randolph, v. 89.
- 13. A person not repelled by law cannot be excluded from a curatorship, on suspicion of an intention to abuse the trust. *Ibid. Ibid.*
- 14. If his appointment be revoked on an appeal, and he delay the delivery of the estate to the appellant, till the heir arrive, he shall not be entitled to the commissions; they shall go to the curator appointed by the appellate court. Preval vs. Debuys and al. v. 428.
- 15. A curator must be appointed by the judge of the parish in which the intestate died.* Deshon and al. vs. Jennings, v. 568.
- 16. A curator's surety is liable to an action on his bond, although neither he nor his principal have been sued for a settlement. Denys vs. Armitage, v. 629.
 - 17. A curator or administrator of an estate cannot be

^{*} It is provided by an act of the 22d March, 1822, that "all curators to vacant estates and estates ab intestato, shall be appointed in the parish where the deceased last permanently resided: Provided, however, that the said persons have a domicil within the state." See New Civil Code, art, 929, 1106.

appointed, when several of the heirs are present and of age. Hopkins vs. Peretz and al. iii. 590.

18. A curator may be sued without his sureties being joined. Denis vs. Cordeviella, iv. 654.

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at e, 19. The money received by a curator is not to be paid to the attorney for the absent heirs, but must be paid into the treasury. *Ibid. Ibid.*

20. The amount expressed in the bond of a curator is prima facie that which is due the heirs. Eggleston vs. Colfax and al. iv. n. s. 481.

Vide Minors. Heir. Successions. Vacant Estate.

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1. Damages may be awarded against the estates of a party, who was sued, and contested the suit. Lebeau vs. Lafon's Executors, i. n. s. 705.

2. They are due for the least wrongful entry. Kemper vs. Armstrong and al. xii. 296.

3. A party who succeeds in a question of title is still liable to pay damages for his illegal and forcible entry. Larche vs. Jackson, ix. 408. White vs. Wells' Executors, v. 652.

4. One who saved another's slave and brought him from Hispaniola, shall not pay damages till after a demand and refusal. Petit vs. Gillet, v. 22.

5. A suit for a negro and damages will bar one for damages, though nothing be said as to them in the first judgment. Delehaje vs. Pellerin, ii. 142.

6. An agent who disobeys orders, is liable only for the damages he occasions. Nelson and al. vs. Morgan, ii. 256,

7. The master of a ship has no claim for damages for the wrongful attachment of goods shipped on board of his vessel, which are not removed, on his promising the sheriff to keep them. Lloyd vs. Patterson and al. i, n. s. 341.

8. If there be a prayer for general relief, damages may be given beyond the specific sum claimed, if the petition shew that they are due. Morgan vs. MGowan, iv. 289.

9. If a vessel on board of which property is shipped be detained by an irregular attachment, the owner of the property is not responsible in damages to her owner for the delay: the remedy of the owner is against the attaching creditor. Hasluck vs. Salkeld and al. xii. 663.

10. Damages on the warranty of goods sold, are not confined to the price of them. Findley vs. Breedlove and al. in s. 105.

11. The owner of a vessel is responsible for the damage done by her, although a pilot be on board. Williamson vs. Price & Morgan, iv. n. s. 399.

12. In an action of damages against a sheriff for neglect of duty, the measure thereof will be regulated by the amount claimed in the original suit. Dupuy vs. Burlow, iv. 18. 239.

Vide Bonds, 6. Banks, 1. Consignee, 1. Responsibility. Warranty. Injunction, 6. Partnership. Penalty, Practice, 20. Prescription, 45. Promise. Reconvention. Sale. Salvage. Slave. Surety. Tort. Exchange—contract of.

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DATION EN PAIEMENT

- 1. A dation en paiement does not require the formalities required in a donation. M'Neely vs. M'Neely, i. n. s. 646.
 M'Guire vs. Amelung and al. xij. 649.
- 2. It differs from a sale, and resembles much the donation remuneratoire. M'Guire vs. Ameling and al. xii. 651.
- 3. Evidence that a conveyance which the act shews to be a sale, was a dation in paiement, is inadmissible. Skillman and Wife vs. Lacey and al. xii. 404.

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DEBTOR AND CREDITOR.

- 1. A debtor cannot avail himself of a payment made contrary to the consent of his creditor, on the pretence that his creditor was agent of him to whom the payment. was made. Landreau vs. Rochelle and al. i. n. s. 497.
- 2. The property of a debtor becomes the common stock of his creditors, in cases of insolvency alone. Scholefield vs. Bradlee, viii. 495.
- 3. A debtor in whose hands a claim has been seized and sold, may deduct from the purchaser any thing that he might have deducted from the original creditor. Flower and al. vs. Arnoud, iv. n. s. 73.

Vide Assignment, Purchaser, 11. Payment, Delega-

DEBTOR IN CONFINEMENT.

- 1. The allowance per week to an imprisoned debtor need not be made or appropriated before arrest. Wood and al. vs. Fitz, x. 199.
- 2. Whether a debtor in the bounds may demand it?
- 3. A debtor within the prison bounds may avail himself of the act of 1808, in favor of debtors in actual custody. Brainard vs. Francis, ii. n. s. 150.
- 4. A person confined within the prison bounds under judgment of the district court, may be discharged by the parish court. Cox vs. Zeringne, iv. 261.

Vide CA'. SA'.

DEDIMUS POTESTATEM.

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DEBTOR AND CREDITOR.

- 1. In determining on the propriety of allowing a ded. pon the court may look into the record of another suit between the same parties; so may the supreme court on an appeal, if the record be there also. Fleekner vs. Grieves' Syndies, vi. 504.
- 2. If fraud be not alleged, no ded. pot. shall be granted to prove it. Ibid. Ibid.
- 3. The affidavit to obtain one ought to state the fact intended to be proven, that the opposite party may have the opportunity of avoiding the delay, by admitting it. *Ibid. Ibid.*

- 4. A ded. pot. may be granted on the affidavit of an agent. Weeks vs. De Blane, ii. 135. Start of the approximate tent
- 5. So also if the party cannot name the witness. Murray vs. Winter & Harman, ii, 100.
- 6. Persons applying for a ded. pot. must disclose the facts intended to be proven. Mann & Bernard vs. Hunt & Smith, in 22, a short of the interlineation of the words in 22, i
- 7. When a ded. pot. issues by consent, the affidavit of the materiality of the testimony is useless. Clay's Syndics vs. Kirkland, iv. 405 and a lon wind daily at book and north
- 8. An affidavit for a ded. pot. to take testimony should be positive, and name the witnesses; but if the suit be by attachment, and the agent swear, it will suffice that he express his belief that the testimony can be procured.-Evans and al. vs. Gray and al. xii. 475.
- 9. A ded. pot. is not necessarily to be directed to a ma-Dunn vs. Blunt, iv. 677.
- 10. But when one is directed to him by name, no proof is necessary to shew that he is a magistrate. Ibid. Ibid. Robertson vs. Lucas, i. n. s. 187.
- 11. When a ded. pot. issues to any magistrate of a county or parish, the official capacity of the person who makes the return must be shewn, although he subscribe himself magistrate or justice. M'Micken vs. Stewart, x. 571. Vide DEPOSITION. Allies book at and instructed

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1. A parish judge has no authority to receive the acknowledgment of a deed. Marie Louise vs. Cauchoix, xi. Assura Hostoric Abbrehebr. 243.

- 2. The proof of a deed cannot be rejected on the ground that it appears to have been improperly obtained, and that the donation which it contains was contradicted by the sale of the thing given by the party who offers the deed. Rouville and al. vs. Rouville, vi. 702.
- 3. If a deed describe land as of twenty arpents with the ordinary depth, the interlineation of the words in front, shall not vitiate it. Barrabine and al. vs. Bradshears, v. 190.
- 4. One may have a direct action on a stipulation in his favor, in a deed to which he is not a party. Mayor and al. vs. Bailey, v. 321.

Vide Adjudication, 2. Action, 2. Donation, 2. Sale.

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Ratestion va. Lains Lays 133.

- 1. A defendant may in good faith, abandon apparent good grounds of defence. Meeker's Assignee vs. Williamson and al. Syndies, viii. 365.
- 2. A deft. cannot allege the nullity of a title, under which he claims. Verret's Heirs vs. Candolle, iv. n. s. 402.

Vide Domicil, 4. AGENT, 12. AMENDMENT. ATTACHMENT, 9. Ca'. Sa'. CITATION, 4. PRACTICE, 1, 8, 29, 30, 31, 46, 47, 48, 51, 55, 82, 84, 99, 101. Sale. Title. Warranty. Witness. Answer. Signature. Abatement.

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DELEGATION.

1. The delegation by which a debtor gives to the creditor a new debtor, who binds himself to the creditor, operates no novation, unless the creditor expressly discharge the originial debtor. Gordon and al. vs. M'Carty, ix. 268.

DELIVERY.

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- 1. A party to avail himself of a feigned delivery against a previous real one, must bring himself strictly within the law which sanctions the claim. Copelly vs. Duverges, xi. 641.
- 2. The mere execution of a notarial act of sale does not dispense with the necessity of a delivery. Ibid. Ibid.

Vide Assignment, 8. Contract. Evidence, 55. Sale.

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3. A plf council read in a suit against two defects des-

1. A demand of a debt due by a wife, may be made of her. Flogny vs. Hatch and al. xii. 82.

of the day should be montroyed in the porior which

relate of the countismoner; it may be proven by allidavit.

DEPOSIT:

- Durnford vs. Segher's Syndics, ix. 484 dw. notoch was a so
- 2. The contract of deposit is entirely gratuitous of Bid.
- 3. A thing deposited is to be returned to the depositor; and the owner of it, if the deposit be not made in his name, has no action to recover it, without a cession of the depositor's right. Jenkinson vs. Copes' Ex'rs vii. 284.

Vide BAILMENT.

has which sanctions .ZNOITIOOTH vs. Diverges, xi.

e. t. A party to avail himself of a leigned delivery against a previous real one; must bring himself strictly within the

- of. A deposition must be reduced to writing by the deponent, the magistrate who receives it, or an indifferent person. Key's Curator vs. O'Daniel, x. 441.
- 2. It is inadmissible in the hand-writing of the party who offers it, or of that of his attorney. Ibid. Ibid.
- 3. A plff. cannot read in a suit against two defts, a deposition taken in his suit against one of them. Hatton vs. Stillwell and al. x. 91.
- 4. Notice of a deposition to be taken out of the state, is to be given as in the case of one within the state. Doane vs. Farrow, ix 222.
- 5. But it is not necessary that it should appear by the return of the commissioner; it may be proven by affidavit. *Ibid. Ibid.*
- 6. The day should be mentioned in the notice. Ibid.

otherwise on his attorney. Ibid. Ibid.

8. If a record shew, that a number of witnesses were sworn, and their depositions taken down, except that of one of them, the certificate that the record contains the whole testimony would induce a presumption, that the witness was not examined, which may be rebutted by the affidavit of the appellee. Mitchell vs. Jewel, ix. 185.

9. Depositions must be returned by the persons receiving them, even when taken by consent. Philibert vs. Wood, ii. 204.

10. Not necessarily so, when the parties agree that they shall be read. Tremoulet vs. Tittermary, ii. 318.

11. The deposition of a witness, taken at a different time and place than those mentioned in the notice, cannot be read. Gilly and al. vs. Logan and al. ii. n. s. 196.

Vide Evidence. Dedimus Potestatem.

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DISTURBANC

1. The disability of a plff. must be taken advantage of by plea. Simpson vs. Burnett, ii. 243. Welman, Curator vs. Connoly. Ibid. 245.

DISCUSSION.

1. A surety bound jointly and severally, cannot avail himself of the plea of discussion. Aston vs. Morgan, ii. 336.

2. A third possessor against whom an hypothecary action is prosecuted, may demand the discussion of the debtor's property, and that of his sureties, but not of property in the hands of other third possessors. Jackson and al. ve Williams, xii. 334 or ork Jane standings and madt to him

Vide Ball, 19. Bonns, 5. Surery of vaccined signife

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was ups not examined which may be refuned by the of days at the approprie. Alucada se Jourdain 185. 18. 9. Depositions must be returned by the persons received

1. Property within the state must be distributed, according to the laws thereof, unless the courts be bound to give effect to those of another country. Bryan and Wife vs. Moore's Heirs, xi. 26.

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DISTURBANCE.

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1. If a vendee be disturbed in his possession by the suit of a third person, he may withhold payment till his vendor give security. Smith vs. Roberts and al. xii. 432. Chrocke Bid 215

Vide VENDOR AND VENDEE.

DOLLARS.

L. A surely bound, jointly and severally, cannot usuit Vide BILLS OF EXCHANGE AND PROMISSORY NOTES. CON-TRACT. 5.

DOMICIL.

1. Whether the lessor of a deft. who disclaims may be brought in out of the parish of his domicil? Fusiker vs. Hennen, xii. 266.

2. The deft. who moves to another parish, buys a house and lives there during three months, cannot plead that he is suable in the first parish only, not having yet acquired a domicil in the other. Rippey vs. Dromgoole and al. viii. 709.

3. Declarations, to operate as a change of domicil, must be made in the parish removed from, and that removed to. Hyde and al. vs. Henry, iv. n. s. 51.

324. One cannot be sued out of the parish in which he resides. Dennis vs. Dumford, iv. n. s. 32. and a terrator bire.

5. A suit for land may be brought in the parish where the possessor resides, though the land be situated in another. Blanchard and al. vs. Ternant, iv. n. s. 188.

Wide ARATEMENT, 4. PRACTICE, 1, 97. DEFENDANT. HUS-BAND AND WIFE, 6. CODE OF PRACTICE, commencing at art. 162.

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DONATION as algered and asyon

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1. In Spain the donation of a slave to an infant, with delivery to its father, is irrevocable, although there be no formal acceptance. Pierce vs. Gray and al. v. 367.

2. A deed of sale not valid as such, may be so as a deed of gift. Holmes and al. vs. Patterson, v. 693.

3. A donation to an infant is valid without any acceptance, if the donor made a deed of it, and died without otherwise disposing of the thing given. *Ibid. Ibid.*

4. The validity of a donation made in another state will be tested by our laws, if those of the state in which it was made be not proved. Hernandez vs. Garetage, iv. n. s. 419.

5. The donation of a slave, without valuation, is null. Williams and al. vs. Horton, Curator, iv. n. s. 464.

domicil in the other.

Rude and at ve Henry, iv, no e. 54

Vide DATION EN PAIEMENT, de des estado estad

Rippin vs. Dronamon oned vini.

2.3. Declarations to operate as a change of doined order. be made in the parish revenued to.

1. When a dowry consists in a sum of money to be once paid, interest is due from the judicial demand only. Chamard vs. Sibley, x, 396.

2. The payment of the whole dowry will not be presumed from the poverty of the husband, or the circumstance of the parties binding their respective estates for the performance of the stipulations in the marriage contract, nor from a part of it being ceded with other property by the husband to his creditors. Viales vs. Viales' Syndies, vii. 634.

3. A wife cannot recover more than the amount she proves she brought in as her dowry. *Ibid.* 651.

4. If by a contract of marriage, land purchased with money received as part of the dower, may be sold by the husband with the consent of the wife; land in common between the wife and her children by a former marriage, and adjudged to her by its valuation, cannot be sold under such contract. De Armas and Wife vs. Hampton, vi. 567.

- by her husband to the amount of her dowry. Madault vs. Mitchell, vi. 688
- 6. Under the Spanish government, if a contract of marriage stated, that the wife brought a certain sum as her dower in a given number of slaves, the property in such slaves passed to the husband. Jourdan and al. vs. Williams and al. vi. 659.

Vide HUSBAND AND WIFE. | MARRIAGE CONTRACT.

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EMANCIPATION.

1. If freedom be given to a slave under the express condition that he will serve his master as before till his death, and he afterwards refuse to do so, and attempt to compel his master to accept a monthly compensation in lieu of his services, he cannot claim his freedom after his master's death. Julien vs. Langlish, ix. 209.

2. If an informal emancipation take place, the master promising to comply with the legal formalities, his rights are not thereby affected till those formalities take place. Bazzi vs. Rose and her child, viii. 149.

3. A record of such an emancipation as this, does not affect the rights of the master. Ibid, Ibid.

14. The deed of emancipation of a slave under thirty years of age. is void. Trudeau's Ex'r vs. Robinette, iv. 577.

5. If the owner of a slave remove him from Kentucky into Ohio, animo morandi, he becomes free ipso facto. Lunsford vs. Coquillon, ii. n. s. 401.

6. The laws of Spain require the presence of five wit-

nessee to a verbal emancipation of a slave. Bazzi vs. Rose and her child, viii 149. and he child, viii 149.

7. A master who has agreed to free his slave on the payment of a certain sum, is not bound to do so fill he receive the whole. Cuffy vs. Castillon, v. 494.

8. Proof of the emancipation of a slave by the person in possession is prima facie evidence of emancipation by the owner. Simmins f. m. c. vs. Parker, iv. n. s. 200.

Vide SLAVE. EVIDENCE, 39, 140. PRESCRIPTION, 1.

MOPENTRY.

1. When an usurper enters upon land, he acquires possession inch by inch, of the part which he occupies. Propost's Heirs vs. Johnson and al. ix. 123. And almost a part of the part which he is a part of the part which he is a part of the part of t

divides, he cannot claim the treedon after his martin

death John is Long L. A. 18. 200

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1. In receiving and weighing evidence, error cannot be assigned as apparent on the record. Mollon and al. vs. Thompson and al. ix. 275.

2. If the party who objects to a juror, refuse to consent that he be withdrawn and replaced by another, he cannot allege it as error. Livingston vs. Heermann, ix. 656.

3. If two experts be appointed to verify a signature, who disagree, and on motion of a party, a third be appointed by the court, he cannot assign this as error. Lecarpentier vs. Delery's Executor, iv. 487.

- 4. Nothing can be assigned as error on the face of the record, which could have been cared by evidence legally given on the trial below. Piedbas vs. Milne, ii. n. s. 537. Fitz vs. Caustoix. Ib. 265. Hill vs. Tuzzine, i. n. s. 599. Butler vs. Despatier, xii. 304. Dannoy vs. Clyma and al. xi. 557.
- 5. After judgment by default, a deft. who was legally cited cannot assign as error apparent on the record, the want of evidence to establish the facts alleged in the petition. Fitz vs. Cauchoix, ii. n. s. 265.
- 6. Evidence introduced by a party on the trial of a cause cannot be assigned by him as error on the face of the record. Albert vs. Davis, xii. 305.
- 7. When facts are submitted to a jury for their finding, a refusal by the court to cause the testimony to be reduced to writing, is no ground of error: in such cases the law does not require it. Sanchez and Wife vs. Gonzales, xi. 208. Livingston vs. Heerman, ix. 656.
- 8. A mistake in a report of referees cannot be assigned as error. Baudin vs. Dubourg and al. iv. n. s. 496.
- 9. Errors which may be assigned as apparent, are only those into which the court itself falls. *Ibid. Ibid.*

Vide Appeal, 63. Supreme Court, 55. Experts. Practice, 99.

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EVIDENCE.

1. Beginning of Proof.

II. When parol evidence admissible and its effects.

III. When parol evidence not admissible.

IV. Writings and documents admissible and their effect.

V. Writings and documents when not evidence, &c.

VI. Presumptions.

VII. Handwriting, Signatures, &c.

VIII. Confessions and Declarations.

IX. Merchants' books.

X. Depositions. e of frantenting my stock and W. V.

XI. Rules of an Inferior Court.

XII. What evidence not allowed.

XIII. Objections to evidence.

XIV. Evidence under allegata.

XV. Habit of running away—what is evidence of.

XVI. Evidence generally.

L BEGINNING OF PROOF.

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1. A synallagmatic contract, not made in the requisite number of originals, is good as a beginning of proof. Ferguson and al. vs. Thomas and al. iii. n. s. 75.

2. A receipt of the plff's produced by the deft. is a beginning of proof in favor of the former. Muse vs. Rogers' Heirs, xii. 350. Lazare's Executors vs. Peytavin, ix. 566.

3. If a written synallagmatic contract, not in duplicate, be deposited in the hands of a third party, who gives to each of the contracting parties a receipt for it, it will be read in evidence, at least as a beginning of proof, and the depositary examined as to its contents. Dow vs. Shimmin, iv. n. s. 53.

II. WHEN PAROL EVIDENCE ADMISSIBLE, AND ITS EFFECTS.

4. The lading of goods may be proved by parol, if it do not appear that a bill of lading was taken. Giraudel vs. Mendiburne, iii, n. s. 509.

5. The payment of a written order, the existence of which is admitted, may be proven by parol evidence without its production. Spraggins vs. White, iii. n. s. 661. Berthoud vs. Barbaroux, iv. n. s. 543.

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6. Parol evidence may be received, when part of the written is lost or destroyed. Morgan vs. Bickle and al. ii. n. s. 377.

7. An authority given to the president of a bank, to compromise a debt, may be shewn by parol evidence. Wolf vs. Bureau, i. n. s. 162.

8. Parol evidence may be received to establish services, rendered by an attorney before a justice of the peace. Veech vs. Grayson, i. n. s. 134.

9. Parol evidence may be introduced to establish the identity of a person who sues as instituted heir. Lafon's Executrix vs. Gray and al. i. n. s. 243.

10. Latent ambiguity may be explained by parol evidence. Ibid. Pigeau and al. vs. Commeau, iv. n. s. 191.

11. Parol evidence may be given of the illegality of the consideration of a note. Soubie's Ex'r vs. Beale and al. i. n. s. 97.

12. Parol evidence of the plff's possession cannot be rejected, on the ground that a survey annexed to the record, does not appear to have been made with the privity of the deft. Daigre vs. Richard, xi. 449.

13. Parol evidence of the death of a person may be re-

ceived, if it do not appear that a record was made of it. Dufour vs. Delacroix, xi. 718.

- 14. When an act is attacked as fraudulent, parol evidence is admissible to prove or rebut the allegation of fraud. Fouque's Syndics vs. Vigniaud, vi. 423. Croize's Heirs vs. Gaudet. 1b. 524.
- 15. So when the verity of an act is tested. Croizel's Heirs vs. Gaudet, vi. 524.
- 16. A renunciation of the community of acquests and gains before a notary in Hispaniola may be proven by a witness, the aunt of the party. Ferry vs. Le Gras, v. 393.

17. Parol evidence may be permitted to shew, that a vendee possessed and cultivated land, and that he attempted to sell it. Pentavin vs. Hopkins, v. 438.

18. The signature and official character of a foreign notary, may be proven by witnesses. Las Caygas vs.

Larionda's Syndies, iv. 283.

- 19. The celebration of a marriage in North Carolina may be proven by parol evidence. White and al. vs. Holsten and al. iv. 471.
- 20. A wife claiming in her own right independently of, and adverse to those of her husband, may establish the simulation of a sale by him, by parol evidence. Guidry vs. Guirot, ii. n. s. 13.
- 21. Parol evidence though not admissible as to title of real estate, is so as to possession. Boudreau vs. Boudreau, xii. 667. MGuire vs. Amelung and al. Ib. 649.
- 22. Whether parol evidence can be received to shew, that part of a sum, mentioned in a written obligation, was received in discharge of the whole? Clay vs. Townsend and al. i. n. s. 264.
 - 23. The admission of a party that he is one of the mem-

bers of a firm, may be received in evidence, although it appear that articles of partnership exist, and are not produced. Donne vs. Farrow, x. 74.

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24. When a counter letter is lost and accounted for, parol evidence of its contents may be admitted. Delery vs. Bunle's undertutor, i. n. s. 152. Greffin's Ex'r vs. Lopez, v. 145.

III. WHEN PAROL EVIDENCE NOT ADMISSIBLE.

25. Parol evidence cannot be received of the contents of a grant. Allard and al. vs. Lobau, iii. n. s. 294.

26. A wife claiming as her husband's legatee, cannot shew by parol evidence, the simulation of a sale. Guidry vs. Guirot, ii. n. s. 13.

27. Proof by a witness that he once had a written paper, and does not know what has become of it, does not authorize parol evidence of the contents. Robertson vs. Lucas, i. n. s. 187.

28. Parol evidence cannot be received to prove that a note, which expresses that dollars are to be paid, ought to be discharged in Kentucky bank notes. Veecle vs. Grayson, i. n. s. 134.

29. Parol evidence cannot be received to explain the meaning of the writer, in a letter in which there is no ambiguity. Lazare's Ex'r vs. Peytavin, xii. 684.

30. Parol evidence of the contents of decrees of the French or Spanish governors of Louisiana, is not admissible. Ulzere and al. vs. Poeufarre, viii. 155.

31. Parel evidence cannot be received against the contents of a deed. Harrison vs. Laverty, viii. 213,

32. Nor against the contents of a bill of lading. Center vs. Torrey, viii. 206.

33. Parol evidence cannot be received of the irregularity of the proceedings of a family meeting, before

parish judge. Tregre vs. Tregre, vi. 665.

34. If there be no suggestion of fraud or simulation, parol evidence cannot be admitted to shew that a deed of sale was intended as a collateral security only. Spicer and al. vs. Lewis and al. vii. 221.

- 35. Parol evidence cannot be received to shew that a grant to A. was made in lieu of, and intended to annul one to B. Chabot and al. vs. Blanc, v. 328.
- 36. On a vendor's plea de non numerata pecunia, the vendee cannot adduce parol evidence to shew, that the consideration was not that which the deed expresses. Barthole vs. Mace, v. 576.
- 37. Although a written sale was made in a country where a verbal one suffices, parol evidence of it cannot be received, unless the absence of the writing be accounted for. Lucile vs. Toustin, v. 611.
- 38. Parol evidence cannot be admitted to destroy a title to real property. White and al. vs. Holsten and al. iv. 471.
- 39. Parol evidence of the agreement for the freedom of a slave, is inadmissible. Victoire vs. Dussuau, iv. 212,
- 40. Parol evidence of the sale of land, is inadmissible, though the vendee be in possession. Grafton vs. Fletcher, iii. 486. L. & F. Frique vs. Hopkins and al. iv. n. s. 212.
- 41. So of a promise to sell real estate. Raper's Heirs vs. Yocum, iii. 424.
- 42. Parol evidence of a warranty in the sale of a slave, not admissible. Watkins vs. M. Donough, ii. 154.
- 43. Parol evidence not admissible to shew that property, purchased at sheriff's sale, was worth less than the amount stated in the bill of sale. Balfour vs. Chew, iv. n. s. 154.

44. Payment of the price of real estate may be proved by parol evidence. L. & F. Frique va. Hopkins and al. iv. n. s. 212.

45. If a steam boat be destroyed by fire, and the books lost, and the clerk who kept them be dead, parol evidence of their contents may be received. Jordan vs. White, iv. n. s. 335.

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46. A record cannot be contradicted by parol evidence.

Williams vs. Hooper, iv. n. s. 176.

IV. WRITINGS AND DOCUMENTS ADMISSIBLE, AND THEIR EFFECT.

47. Vouchers filed by an executor, in support of his account, are, prima facie, evidence of their correctness.—Casanovichi and al. vs. Debon and al. ii. n. s. 596.

48. The certificate of a commissioner, that a deposition was taken in his presence, is evidence that every thing appearing on the face of it, was done in his presence, Bowman vs. Flowers, ii. n. s. 267.

49. The record of a suit, in which judgment was rendered for an intervening creditor, is sufficient evidence of the latter's claim. Hodge vs. Morgan, ii. n. i. 61. Planters' Bank and al. vs. Lanusse and al. xii. 159.

50. The mention in a judgment, discharging a debtor, that he took the oath required by law, is evidence of that fact. Brainard vs. Francis, ii. n. s. 150.

51. A concordat, granted by creditors, may be given in evidence, although not homologated. Wolf vs. Bureau, i. n. t. 164.

52. The record of a suit, which was not prosecuted to judgment, is good evidence. Barlow vs. Dupuy, i. n. s. 442. Bore's Ex'r vs. Quierry's Ex'r iv. 545.

- 53. If the copy of a private deed be received in evidence, its effect will be the same as that of the original.—

 Pannell vs. Cox and al. i. n. s. 614.
- 54. A defle may read a deed from his vendor, to establish any facts it will legally prove. Gayoso De Lemos vs. Garcia, i. n. s. 324.
- 55. A deed is of itself evidence of the vendor's consent, that the vendee should take possession, when the thing is not in the hands of a third person; and this consent is itself a delivery. Fortin vs. Blount, i. n. s. 179.
- 56. A certificate of the recorder of mortgages, is, prima facie, evidence of what it contains. Lafarge vs. Morgan and al. xi. 463.
- 57. It may be contradicted, but it is not sufficient to shew that the recorder acted on irregular evidence. *Ibid.*
- 58. Although a deed be void as to the transfer of a vendor's right, it may be resorted to as evidence of the quantity of land, which the apparent vendee, with the consent of the owner, took possession of against a stranger without color of title. Bernard vs. Shaw and al. ix. 49.
- 59. Private deeds of sale for real estate, are legal evidence to go to a jury. Livingston vs. Hearman, ix. 656.
- 60. A judgment obtained by a minor against his tutor, is evidence of his claim on the tutor's property, sold to a third person. Bernard and al. vs. Vignaud, viii. 442.
- 61. A certified copy of a sheriff's deed, made to property sold under a fi. fa. is legal evidence. Peytavin vs. Hopkins, v. 438.
- 62. The signatures and official characters of the encient governors of Louisiana, are matters of public notoriety; and evidence of the genuineness of the former is not required. Jones vs. Gale's Executrix, iv. 635.

- 63. An act is evidence of every disposition in it, and of what is therein expressed by way of recital, when it has reference to the disposition. St. Maxent's Syndics vs. Puche, iv. 193.
- 64. An original notarial act cannot be rejected on the ground that the keeper ought not to have parted therewith. Baudin vs. Pollock and al. iv. 613.
- 65. A certificate of the wardens of the port of New-Orleans, admitted in evidence. Tremoulet vs. Tittermary, ii. 317.
- 66. A judgment in a suit by attachment is evidence of the debt in another suit brought in the same state. Gray vs. Trafton, xi. 246.
- 67. The surrender of the sole evidence of an inchoate, and conditional title before the performance of the condition, is evidence of an implied abandonment under it. Boissier and al. vs. Metayer, v. 678.
- 68. A justice's certificate will not be rejected, because it does not bear date from his parish. Despau and al. vs. Swindler, iii. n. s. 705.
- 69. The courts recognise the signatures of judicial officers appointed by the governor, with the advice and consent of the senate. *Ibid. Ibid.*
- 70. An invoice accompanying goods, must be duly proved to be correct before it can be received in evidence against the master of a ship. Urquharts vs. Robinson, i. 236.
- 71. Whether the acknowledgment of a deed before a justice of the peace in Massachusetts, authenticated by the governor, be legal evidence? Stearns vs. Rust, v. 518.
- 72. A plat of survey, made under the authority of the surveyor general of the former government of Louisians,

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is legal evidence in support of title to the land surveyed.

Litchworth and al. vs. Bartells and al. iv. n. s. 136.

- 73. When payment to a third party is the condition of a contract, a receipt from such third party, is evidence between the parties contracting. *Malchaux* vs. *Lefebre*, iv. n. s. 489.
- 74. When a judgment is the basis of a mortgage, it may be given in evidence against a third possessor. Martinez vs. Layton and al. iv. n. s. 369.

V. WRITINGS AND DOCUMENTS—WHEN NOT EVIDENCE, &c.

- 75. The certificate of a notary under the act of 1821, is not evidence, unless it be attended with a strict observance of all legal formalities. Fougard vs. Tourregard, iii. n. s. 464.
- 76. An extract from the books in which grants were recorded cannot be given in evidence until the absence of the grant be satisfactorily accounted for. Roman's Heirs vs. Smith and al. i. n. s. 473.
- 77. An invoice accompanying a bill of lading is not per se evidence of the quantity and value of the goods. Watson and al. vs. Yates, x. 687. Urquharts vs. Robinson, i. 236.
- 78. An affidavit of a witness, since dead, taken in the absence of the opposite party, cannot be read in evidence. Finlay and al. vs. Kirkland, ix. 463.
- 79. The record of a suit cannot be read in evidence against one who was not a party, nor privy thereto. Ulzere and al. vs. Poeyfarre, viii. 155. Morgan vs. Livingston and al. vi. 227. Hyde and al. vs. Henry, iv. n. s. 51.
- 80. The record of the conviction of a slave cannot be given in evidence against his master. Steel vs. Cazeaux, viii, 318. Lewis vs. Peytavin, iv. n. s. 4.

81. The record of a suit against a principal on an attachment bond, is no evidence against the surety. Lartique vs. Baldwin, v. 193.

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82. A vendor's letter announcing his failure cannot be read against a vendee to impeach his title. Crocker and al. vs. Ainsley and al. v. 524.

83. A copy of a sale by a parish judge, is inadmissible testimony. Collins vs. Nichols and al. ii. 128.

84. A clerk's certificate that there is a judgment, is no evidence of it. Kersham vs. Collins, ii. 245.

85. Unsigned writings in the possession of a creditor, no proof of a debt. D'Argy vs. Godefroi, i. 76.

86. A judgment is not evidence against third parties, of the truth of facts on which it was rendered. Williams vs. Trepagnier and al. i. n. s. 271. Breedlove and al. vs. Turner, ix. 353.

87. A certificate of the clerk of an inferior court that there was a petition of appeal, which was taken out of court, is not sufficient evidence to establish that fact. Mulanphy vs. Murray, xii. 430.

VI. PRESUMPTIONS.

88. If a paper be legal evidence of one fact, and not of another, it will be presumed that it was used to support the first. Fougard vs. Tourregard, iii. n. s. 464. Smoot and al. vs. Russel, i. n. s. 522. Breedlove and al. vs. Turner, ix. 379. Lartigue vs. Baldwin, v. 196.

89. Proof of the line in dispute being the real boundary of the younger tract (purporting to be bounded by the older) is strong presumtive evidence of its being the boundary line of the former. Sterling's Heirs vs. Johnson, ii. n. s. 289.

- 90. Long absence, when presumptive evidence of death.

 Hayes vs. Berwick, ii. 138.
- 91. In a suit to recover the amount of a note, said to be lost, if the existence thereof be admitted by the deft. who does not plead payment, presumtive evidence of its loss, will suffice. Lewis vs. Peytavin, iv. n. s. 4.
- 92. But in such case the plff. will be required to give security. *Ibid. Ibid.*

VII. HANDWRITING, SIGNATURES, &c.

93. A note neither proven to have the signature of the president or cashier of a bank, or to have been acknowledged by them, cannot be made use of as a piece of comparison before experts. Conrad vs. Louisiana Bank, x. 700.

94. A witness may be examined to prove whether or not the engraving of a note be similar to that of those, which are avowed to be genuine. *Ibid. Ibid.*

95. A witness may prove the signature of a person, with whose hand-writing he is well acquainted, though he never saw him write. Las Caygas, vs. Larionda's Syndies, v. 325. Clay's Syndies vs. Kirkland, iv. 405.

96. When a signature is formally disavowed, proof by experts must be resorted to. Clark's Ex'rs vs. Cochran, iii. 353.

97. When notes are to be proven by the report of experts, the appeal bond is a good piece of comparison.—
Sauve vs. Dawson, ii. 202.

98. A deft's signature at the foot of an appeal bond is evidence that he appealed, though the record does not contain the petition of appeal. *Mulamphy* vs. *Marray*, xii. 429.

99. When a party does not formally deny his signature,

it may be proven by witnesses. Lynch vs. Postlethwaite, vii. 70. Clark's Ex'r vs. Cochran, iii. 360.

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100. If the subscribing witness to a deed reside out of the state, his hand-writing may be proved, and the deed read. Lynch vs. Postlethwaite, vii. 69.

101. The signature of an officer to a bond, which he is bound by law to take, proves itself. Wood and al. vs. Fitz, x. 196.

VIII. CONFESSIONS AND DECLARATIONS.

102. The acknowledgment of a syndic, that a counsel was employed by the insolvent, is not evidence of an agreement to pay him. Seghers vs. Moulon's Syndics, ii. n. s. 608.

103. Declarations of the vendor, out of the presence of the vendee, may be given in evidence against the latter; but they are not evidence of fraud in him. Guidry vs. Grivot, ii. n. s. 13.

104. The declarations of a father of the age of a child, are good evidence, if made before the cause of action accrued. David vs. Sittig, i. n. s. 147.

105. The former declarations of a witness may be received to contradict the evidence he gives on the trial. Robertson vs. Lucas, i. n. s. 187.

106. When declarations form a part of the res gesta, they may be given in evidence. Barry vs. Louisiana Insurance Co. xii. 493.

107. The acknowledgment of the maker of a lost note, suffices to prove it. Latapie vs. Gravier, viii. 316.

108. The conversation of a party, while a compromise is in view, may be admitted to prove a fact. Delogny vs. Rentoul, ii. 175.

109. A party's allegations on the record, are the highest evidence against him; and the effect of it cannot be affected by any other contradictory evidence. De Lacroix vs. Prevost's Ex'r vi. 276.

110. If an executor answer to interrogatories, that he believes his testator's note to be genuine, but that he also believes it to have been paid, it will not be proof of payment. Franklin vs. Kemball's Ex'rs v. 666.

IX. MERCHANTS' BOOKS.

111. Merchants' books are not evidence against other merchants of the sale and delivery of articles there charged. Syndics of Johnson vs. Breedlove and al. ii. n. s. 508.—Herring vs. Levy, iv. n. s. 383.

112. A plff's books are not evidence for him. Cavelier

and Petit vs. Collins, iii. 188.

- 113. Neither the insolvent nor his books can be admitted to charge the ceded estate. Menendez vs. Syndics of Larionda, iii. 256.
- 114. They are evidence, on proof of the clerk's hand-writing who kept them, and of his death. Herring vs. Levy, iv. n. s. 383.
- 115. But extracts from them, are not. Ibid. Ibid.
- 116. Partnership books are evidence between partners. Jourdan vs. White, iv. n. s. 335.
- 117. An insolvent's books not good evidence in an action between his creditors. Canfield and al. vs. Maher and al. iv. n. s. 174. Menendez vs. Larionda's Syndics, iii, 707.

X. DEPOSITIONS.

118. Depositions cannot be read in evidence, when the

opposite party has not received notice of the time and place of taking them. Robertson vs. Lucas, i. n. s. 187.

XI. RULES OF AN INFERIOR COURT.

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119. The rules of the district court must be shewn to the supreme court by evidence, as any other matter of fact. Bowman vs. Flowers, ii. n. s. 268. Butler vs. De Hart, i. n. s. 184.

XII. WHAT EVIDENCE NOT ALLOWED.

120. Evidence which is immaterial cannot be received. Gravier vs. Pitot and al. ii. n. s. 567.

XIII. OBJECTIONS TO EVIDENCE.

121. A party objecting to evidence must at the trial, state the particular ground of his objections. Bowman vs. Flowers, ii. n. s. 268. Bernard vs. Vignaud, x. 637.

122. It is not a good objection to evidence, that it does not make out at once, the whole of the case, in support of which it is offered. Guidry vs. Grivot, ii. n. s. 13.

123. If a party, who has a right to resist the introduction of parol testimony, introduce it himself, he cannot afterwards object to the evidence it furnishes. Lafon's Ex'rx vs. Gravier and al. i. n. s. 243.

124. If a party mistake his right in a petition, but offers evidence which clearly establishes it, and the opposite party does not object to its introduction, the error will be cured. Bryan and Wife vs. Moore's Heirs, xi. 26. Canfield and al. vs. M'Laughlin, ix. 317.

125. If parol evidence be improperly offered, the adverse party ought to object to its introduction. High-lander vs. Flucke & Vernon, v. 442.

126. If improper evidence be received without objection, the party who had a right to object to it, cannot afterwards complain that it was improperly introduced.—

Babineau vs. Cornier, i. n. s. 456. Pannell vs. Coe and al. lb.
614. M'Neely vs. M'Neely. lb. 646. Fougard vs. Tourregard, iii. n. s. 464. Highlander vs. Flucke & Vernon, v. 442.

XIV. EVIDENCE UNDER ALLEGATA.

127. A party will not be permitted to prove what he did not allege. Giraudel vs. Mendiburn, iii. n. s. 509.

128. An allegation that a slave was a thief, authorizes the admission of evidence, that he was in the habit of stealing. Chretien vs. Theard, ii. n. s. 582.

129. In a suit for rescinding the sale of a slave on an allegation of a habit of running away, the deed of sale of the deft's vendor, is evidence for the plff. Sikes vs. Allen and al. ii. n. s. 622.

130. An allegation that the plff. is owner, authorizes evidence of possession. Layton vs. Syndics of Menard, ii. n. s. 505.

131. If a plff, declare upon a written contract, he cannot give a parol one in evidence. Fisk and al. vs. Cannon, i. n. s. 346.

132. Proof that the deft. had a horse of the plff's for sale, does not support a charge that he purchased it, and is debtor for the price. Johnson vs. Crocker, xi. 617.

133. He who alleges a fact, must establish it fully: it does not suffice that he render it probable—particularly when fraud is alleged. Fort and Wife vs. Metayer and al. x. 419. Turnbull vs. Martin. Ib. 419.

134. An account ought to be received in evidence, although it be not added up, and give in items what is stated

in the petition as a general balance. Finlay and al. vs. Kirk-land, ix. 463.

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135. When a party charges another with a culpable omission, or breach of duty, he is bound to prove it, although it involves a negative. Hicks and Wife vs. Martin, ix. 47.

136. When the gist of the action is negligence, the party is confined to the particular species alleged in the petition.

Breedlove and al. vs. Turner, ix. 380.

137. When proper evidence is not produced on the trial, the presumption is, not that the lawyer neglected to offer, but that the client failed to furnish it. *Ibid. Ibid.*

138. If the deft. rely on special pleas alone, there is no need of any proof of the allegations in the petition. M'Neil and al. vs. Coleman, viii. 373.

139. The evidence must correspond with the allegations. Victoire and al. vs. Moulon, viii. 400.

140. A party who has offered proof of emancipation, may offer evidence of a free birth. Beard vs. Poydras, iv. 348.

141. A vendor, who alleges a sale at a specific price, may give evidence of the value of the object sold at the time of sale. Boyd and al. vs. Howard, iv. n. s. 178.

142. Evidence that a curator was appointed in 1813, will be admitted under an allegation that the appointment was made in 1815. Pigeau and al. vs. Commeau, iv. n. s. 190.

143. Simulation may be given in evidence under the general issue, if not objected to. Montamat and al. vs. Debon, iv. n. s. 147.

XV. HABIT OF RUNNING AWAY—WHAT IS EVIDENCE OF.

SANTE MERCHANISM CONTRACTOR

144. Evidence of a slave's having run away before the sale, may, with other circumstances, establish the habit of running away. Sikes vs. Allen and al. ii. n. s. 622. Macarty vs. Bagnieres, i. 149.

XVI. EVIDENCE GENERALLY.

145. The vendee's assent to a sale may be shewn by evidence de hors the record. Baudin vs. Roliff and al. Robertson and al. Interpleaders, i. n. s. 166. Bradford's Heirs vs. Brown, xi. 217.

146. Evidence that a charge made in an account, is the customary price in New-Orleans, is no proof of its correctness. Sennett vs. Pierce and al. i. n. s. 192.

147. If a son buy a lot for his tather, who afterwards pays the ground rent, the consideration of the sale, and warrants the title of his son to the vendee, these circumstances will not be conclusive evidence that the purchase was authorized or ratified by the father, if it be shewn that he ever refused to ratify it. Mayor and al. vs. Hunter, xii. 3.

148. Experts cannot be appointed to examine property in order to ascertain its value; nor is their report legal evidence. Millaudon vs. New-Orleans Water Co. xi. 278.

• 149. When a party in a transaction, on which an action is founded, has acted towards the other as possessing a certain character, and acknowledged that in which he sues, these circumstances will be prima facie evidence of his capacity to sue, and this circumstance throws the bur-

thern of proof on the party objecting. Prevosty vs. Nichols, xi. 21.

150. The prohibition of receiving parol evidence against or beyond the contents of an act extends only to parties to it: third persons are not affected thereby. Barry vs. Louisiana Ins. Co. xi. 630.

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151. When testimony is contradictory, it is the duty of the court to reconcile it if possible. Dufour vs. Delacroix, xi. 719.

152. A deft. sued for giving a pass to the plff's slave, whereby he effected his escape, may give the freedom of the negro in evidence. Brown vs. Compton, x. 425.

153. To authorize a party to give in evidence, circumstances not immediately connected with the matter in dispute, they must be of such a nature as to produce a fair and reasonable presumption of the fact at issue. Conrad vs. Louisiana Bank, x. 700.

154. When it is doubtful whether or not evidence be material, it is to be admitted. Lazare's Ex'rs vs. Peytavin, ix. 566.

155. Evidence cannot be received to contradict the answers of a garnishee to interrogatories, without making him a party. Allyn vs. Wright, ix. 271.

156. When a deft. pleads the general issue, and does not set up a title, the plff. is not relieved from the necessity of proving a legal title in himself, by shewing that the deft. has a defective one emanating from the same source with his own. Sassman vs. Aime and Wife, ix. 257.

157. When a cause is tried on special facts, submitted to a jury, the law has not made any provision for the clerk's taking down evidence. Livingston vs. Heerman, ix. 656.

158. The assumption of the debt of another must be strictly proved. Old and al. vs. Fee, viii. 14.

159. Under a plea of payment, evidence cannot be received of the rate at which the plff. ordinarily lends money. Durnford vs. Bariteau, v. 504.

160. It is not enough to prove, that a writing purporting to be a bill of sale, was seen in the hands of the adverse party; but proof of its genuineness must be made. Bradford's Heirs vs. Calvit, v. 662.

161. The truth of a libel cannot be admitted in evidence. Territory vs. Nugent, i. 111.*

162. No act of assembly can deprive a party of evidence, acquired previous to its passage. Durnford vs. Ayme, iii. n. s. 272.

163. Courts recognise the signatures of judicial officers appointed by the governor, with the advice and consent of the senate. Despau and al. vs. Swindler, iii. n. s. 705.

164. The oath of an agent, whose knowledge of the amount due to his principal is derivative, is not legal evidence of the debt. *Planters' Bank and al.* vs. *Lanusse and al.* x. 691.

165. The acts of a party are good evidence for him when they make part of the res gestæ. Bedford and al. vs. Jacobs, iv. n. s. 528.

166. Between creditors the acknowledgement of their solvent debtor, is prima facie evidence of the debt. Armor vs. Cockburn and al. iv. n. s. 667.

167. Possession of a note is prima facie evidence of ownership. Parham vs. Murphey, iv. n. s. 355.

168. But it is not evidence that the possessor is acting for a third party. *Ibid. Ibid.*

Vide AGREEMENT, 3, 4, 5. AMBIGUITY. APPEAL, 91, 93.

^{*} The truth may be given in evidence in a civil suit for damages. See the act of the 16th Feb. 1821.

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ARBITRATORS, 5. ATTORNEYS, 2. AUCTIONEER, 2. BAIL, 6. BONDS, 17. BANK CHECKS, 2. BANKRUPTCY, 3, 4. BOOKS AND PAPERS—PRODUCTION OF. CERTIFICATE, 1, 3, 9. CITATION, 7. SUPREME COURT, 2. DEDIMUS POTESTATEM, 2. DEPOSITION. WRITINGS AND DOCUMENTS—PRODUCTION OF. WITNESS. EXCEPTIONS, 2. EXPERTS. FOREIGN LAWS. FORGERY. FRAUD. IDENTITY. INSURANCE, 6. INTERROGATORIES. PAYMENT, 1. PRACTICE, 7, 8, 29, 31, 34 to 45, 111. SALE. SIMULATION. SURETY. VENDOR AND VENDEE.

EXAMINATION OF PRISONERS.

- 1. The examination of a prisoner on oath will be rejected. State vs. Pierce, ii. 253.
- 2. The examination of a prisoner cannot be proved by parol evidence. State vs. Rodriguez, ii. 253.

EXCEPTIONS.

- 1. The exception de non numerata pecunia may be made in case of an authentic act.* Sexnander vs. Fleming, i. n. s. 256. Lepretre vs. Sibley, x. 302. Croizet's Heirs vs. Gaudet, vi. 526. Berthole vs. Mace, v. 593. Griffin's Ex'r vs. Lopez. Ibid. 145.
 - 2. Dilatory exceptions must be proved by the party
 - * This exception is abolished by the New Civil Code, art. 2234.

making them, unless the proof involve a negative. Gayoso De Lemos vs. Garcia, i. n. s. 324.

- 3. A vendor cannot avail himself of the exception de non numerata pecunia, after thirty days. Lepretre and al. vs. Sibley, x. 302.
- 4. Exceptions to the report of referees may be made ore tenus, if no objection be made to that course. Zoit vs. Millaudon, iv. n. s. 470.

Vide LOUISIANA STATE BANK. PRACTICE, 26, 27, 28.

EXCHANGE—CONTRACT OF.

- 1. A party to a contract of exchange may sue for damages, or demand the thing he gave. Goodwin vs. Heirs of Chesneau, iii. n. s. 410.
- 2. If a party to a contract of exchange be evicted by a minor, the latter must restore what he received if it be in his possession. *Ibid. Ibid.*
- 3. If one give a quantity of pork, and some money for the note of another, he has no recourse on the non-payment of the note. Shuff vs. Cross, xii. 89.
- 4. If one get possession of a thing under a promise of an exchange, which does not take place by the delivery of the thing he proposed to give, or by any act or deed of exchange, the property of the thing so possessed, does not pass to him. *Mayes* vs. *Calvit*, xii. 377.
- 5. An agreement for an exchange of slaves, not signed by the parties, is not valid. *Morgan* vs. *M'Gowan*, iv. 209. Raper's Heirs vs. Yocum, iii. 443.

EXECUTION.

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II. Ca. Sa.

III. Treasury Executions.

IV. Executions generally.

I. FI. FA.

1. A fi. fa. may be levied on money directed by the legislature to be paid to the deft. and he cannot urge that it is in the constructive possession of a third person. Flower and al. vs. Livingston, ii. n. s. 615.

2. A deft. on a fi. fa. may purchase the plff's note and suspend the execution of the writ, till his right to set off the amount of the note be enquired into. Caldwell vs. Davis, ii. n. s. 135.

3. If a debtor's property be encumbered by mortgages or privileges, a sheriff may seize as much of it as will satisfy an execution over and above the liens. Landreaux vs. Hazleton, i. n. s. 600.

4. A fi. fa. may be levied on a debtor's property aliened without consideration. Kimble vs. Kimble and al. i. n. s. 633.

5. A contract of pledge in the form of one of sale will not protect the property from an execution. Williams and al. vs. Schr. St. Stephens, i. n. s. 417.

6. The return on an execution need not state that personal property could not be found to justify the seizure of slaves. Thompson vs. Chretien and al. xii. 250.

7. A creditor of a vendor may seize on a ft. fa. property sold by him before a delivery to his vendee. Ibid. Ibid.

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Badnal vs. Moore and al. ix. 403. Fisk vs. Chandler, vii. 24. Ramsay vs. Stevenson, v. 23. Norris vs. Mumford, iv. 20. Durnford vs. Syndies of Brooks, iii. 222.

8. An execution operates as a lien on all the moveable property of a deft. from the day it comes into the sheriff's hands. Duffy vs. Townsend and al. ix. 585.

9. The levy of a fi. fa. on the property of a co-debtor does not screen that of the other. Dussuau and al. vs. Rilieux, ix. 318.

10. A seisure of land on a fi. fa. divests the deft. of his legal possession. Prevot and wife vs. Hennen, v. 221.

11. An alias fi. fa. cannot issue till after the return of the first. Mackey vs. Trustees Presbyterian Church, iii. n. s. 390.

12. A deft's right to a note may be sold on an execution. Brown vs. Anderson, iv. n. s. 416.

13. A seisure under a fi. fa. does not divest the debtor of the ownership of the property seized. U. States and al. vs. Hawkins' Heirs, iv. n. s. 317.

II. CA. SA.

14. On a fi. fa. against two, returned stayed as to one by order of the plff. and no property of the other found, a ca. sa. cannot issue against the latter. Casson vs. Cureton, xii. 435.

III. TREASURY EXECUTIONS.

15. On a notice that an order will be moved for to put in force a treasury execution, the court below cannot give judgment for the state, for the amount of the sum named in the execution. State vs. Montegut and al. vii. 447.

16. Such an execution does not carry interest, and

under it, the money could only be raised by the sale of the property of the debtor, and his sureties. Ibid. 450.

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IV. EXECUTIONS GENERALLY.

17. A ca. sa. or a fi. fa. must be returnable in no less than sixty, nor more than ninety days.* Woodruff vs. Penny's Bail, xii. 676.

18. Whether the holder of a note, secured by a special mortgage, having obtained a judgment, may levy on other property than that specially mortgaged? Croghan vs. Conrad, xii. 9.

19. If property advertised for sale on an execution, be not sold, it must be advertised anew, as if it had not been done before. Crocker vs. Watkins, iv. 540.

20. When an appeal is abandoned, execution cannot be issued from the court above. Mollere vs. Bayon, ii. 144.

Vide Assignment, 11. Debtor and Creditor, 3. Executor, 16. Injunction, 8. Mortgages. Privilege, 12. Sale. Seizure and Sale—order of. Sheriff. Toll. Ca. Sa.

EXECUTOR.

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THE BOTH

1. He cannot pay any debt without an order of court, particularly if it be one to which prescription is pleadable. Lafon's Heirs vs. His Executors, iii. n. s. 707.

^{*} An execution must be in English and French when the mother tongue of the deft. is French. See Code of Practice, art. 626: and by art. 700, the return must be made in thirty days, if moveable property be seized, and seventy days if it be immoveable. See also the acts of 1826, p. 174, sections, 16, 17.

2. Executors cannot be received in their private capacity as sureties on an appeal taken from a judgment given against them, which binds them in their individual capacity. Lafon vs. Testamentary Executors of Lufon, ii. n. s. 571.

3. An executor is suable before all the property be administered; but in such case the judgment should not be absolute, but that he pay in the course of the administra-

tion. Herman vs. Flood and al. ii. n. s. 659.

4. When he sues on a cause of action, which did not exist in the testator, he need not sue as executor. Butler vs. Kenner and al. ii. n. s, 274. Hunter vs. Postlethwaite, x. 456.

- 5. An executor residing abroad cannot resist the just claims of legatees here. Hepp and al. vs. Lafonta's Ex'rs, ii. f. s. 446.
- 6. He cannot refuse to give up an estate to the heir, on the ground that he has been unable to liquidate it within the year. Lafon's Executrix vs. Gravier and al. i. n. s. 244.
- 7. But he may retain the administration for a longer time if he be so authorized by the will. *Ibid. Ibid. Gayoso De Lemos* vs. *Garcia*, i. n. s. 325.
- 8. In such case, however, he cannot refuse to render an account at the end of the year. Lafon's Executrix vs. Gravier and al. i. n. s. 244.
- 9. He cannot sell the property of the estate by private sale, although authorized by the will to act extra judicially. Gayoso De Lemos vs. Garcia, i. n. s. 326.
- 10. He is not suable by the heirs for any single act of his administration: their action must be to compel him to account. Hodge's Heirs vs. Durnford, i. n. s. 101.
- 11. He cannot be allowed the fee paid counsel to defend him, in a suit brought by the heir after the expiration

of the year, to obtain a surrender of the property. Ferrer vs. Bofil, xi. 234.

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12. Nor for the fee paid in an action brought by the heir alleging fraud, and afterwards discontinued. Ibid. 235-

13. Nor that in a suit brought by him on an uncertain event, when it is not proven that he exercised a sound discretion. *Ibid. Ibid.*

14. If one partner be executor, the firm cannot purchase part of the estate at a sale thereof. Harrod and al. vs. Norris' Heirs, xi. 297.

15. Whether the word "executor" in an endorsement, is to be considered as one of description merely, or as indicating that the party acted in right of the testator.—

Harrod and al. vs. Paxton, xi. 549.

16. If there be judgment against an executor for a debt of his testator, and no property of the estate being found, and execution issue against that of the executor, he cannot be relieved without shewing that the property of the estate which came to his hands, has been legally administered. Quierry's Ex'r vs. Faussier's Ex'rs, vi. 645.

17. An executor may sue on a promissory note given to him in his capacity as such, even one year after the death of his testator. *Urguharts*, *Ex'rs* vs. *Taylor*, v. 201.

18. He cannot act under a will made abroad, without probate thereof made here. Deshon and al. vs. Jennings, v. 568.

19. If he present his account, which is contested, and a decree made for the balance, and he afterwards receive other monies, he cannot present a new account, including with these monies items of the first account, with additional charges not before produced. Robins' Widow and al. vs. His Creditors, v. 515.

- 20. If a suit be brought in thirteen years after the death of the testator, it will be too late (though by the will, time beyond the year was allowed to the executor) to complete his trust. Lamothe's Ex'r vs. Dufour and al. iv. 338,
- 21. The time during which the courts were shut during the invasion, is to be deducted from the year which the executor had to complete his trust in. Quierry's Ex'r vs. Faussiere's Ex'rs, iv. 609.
- 22. Two executors may maintain a suit, although one of them only be qualified. Clark's Ex'rs and al. vs. Farrar, iii. 247.
- 23. Executors cannot safely pay a mortgagee creditor, until his claim be settled contradictorily with those of the other creditors. Kenner and al. vs. Duncan's Ex'rs, ii. n. s. 287.
- 24. An executor is not suable in a district court for a debt of his testator. M'Donough vs. Johnson's Ex'rs, ii. n. s. 287.
- 25. If an executor suffer three years to elapse without taking any steps for the recovery of a debt, and then give farther credit, taking a mortgage in his own name as security for the payment of such debt, and one also due to himself (as if the whole was due to him) he will be liable as a negligent executor. Norwood's Ex'rs vs. Duncan and al. x. 708.

Vide Administrator, 4. Attachment, 24. Bills of Exchange and Promissory Notes. Heir. Interrogatories, 19.

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EXPERTS.

- 1. A report of experts cannot be objected to on the ground that they were sworn after it was reduced to writing. Nott vs. Daunoy and al. ii. n. s. 1.
- 2. Nor because the oath was administered by a justice of the peace. *Ibid. Ibid.*
- 3. Although there be but one tract of land to be divided, experts ought to make an inventory and appraisement of the several buildings on it. *Ibid. Ibid.*
- 4. If two experts be appointed to verify a signature, who disagree, and on motion of a party a third be appointed by the court, he cannot assign this as error. Lecarpentier vs. Delery's Ex'r, iv. 487.
- 5. Experts are to decide on comparison of the hand-writing, and cannot receive and act on information of the circumstances of the case. *Ibid.* 454.

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EX POST FACTO LAW.

1. Ex post facto laws according to the constitutions of the United States and this state, must be understood as confined to criminal cases. Dutillet vs. Dutillet's Syndics, iii. n. s. 469. Le Breton vs. Morgan, iv. n. s. 141.

5. A factor top a free of the good or of the compate the factor of the f

Vide CONSTITUTIONAL LAW.

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EXTINGUISHMENT.

1. The act of extinguishing a debt, dispenses with a previous declaration of such an intention. Baldwin vs. Williams, i. n. s. 618.

Vide PAYMENT.

FACTOR.

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1. A factor who sold at sixty days, cannot avert the consequence of his neglect to demand payment at the expiration of that time, by shewing that it was his practice not to call upon his customers till the amount due was sufficient to demand a note, and then to take it at sixty days. Gilly and al. vs. Logan and al. ii. n. s. 196.

2. If he purchase goods for his principal, and promise to ship them, he cannot afterwards renounce the bargain

with his principal. Ibid. Ibid.

3. If at the expiration of the credit given, he take a note payable to himself on a future day, he makes the debt his own. Hosmer vs. Beebe, ii. n. s. 368. Richardson and al. vs. Weston, iv. n. s. 244.

4. The liability of a factor, who sells on credit, depends much on the prevailing custom, of which the jury is the best judge. Reano vs. Mager, xi. 636.

5. A factor has a lien on the goods of his principal in his hands for the balance of his general account. Patterson and al. vs. M'Gahey, viii. 486.

- 6. A factor who has accepted drafts for his principal, has a lien on the goods in his hands, which an attaching creditor cannot defeat. Kirkman vs. Hamilton and al. ix. 297.
- 7. A factor handing over his correspondent's goods to a third person for sale without orders, makes himself liable. Mark vs. Bowers, iv. n. s. 95.
- 8. A factor who extends the time of credit, makes himself liable. Richardson and al. vs. Weston, iv. n. s. 244.

Vide LIEN. PLANTER. AGENT.

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FAMILY MEETING. and of the second property of

THE PROPERTY

1. If the proceedings of a family meeting, held before a parish judge for the partition of an estate, be recorded in the French language, they will be set aside.* Tregre vs. Tregre, vi. 665.

FATHER.

- 1. The father who claims the estate of his natural child, must prove his acknowledgment of him by the registry of baptism, or two witnesses. *Pigeau* vs. *Duvernay*, iv. 265.
- 2. A father may recover possession of his children, carried away by the mother. Bermudez vs. Bermudez, ii. 180.

 Vide Collation.

^{*} See the act of the 16th of March, 1822, relative to deliberations of family meetings, &c. Also the act of the 17th of March, 1826, on the same subject.

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FEES.

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1. The fees of a parish judge, for selling the property of a succession, are those fixed by the act of 1813. Tessier vs. Sibley and al. ii. n. s. 88.

Vide ATTORNEYS, 30, 31. AUCTIONEER, 3. SHERIFF.

FEME COVERT.

1. A wife binding herself for her husband must renounce specially the laws of *Toro*, in favor of women. Beauregard, Executor vs. Piernas and Wife, i. 281.

Vide HUSBAND AND WIFE, 7, 11.

FENCE.

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1. He who takes cattle to pasture for hire, must keep his field under a good fence. Cecil vs. Preuch, iv. n. s. 256.

2. And if it be not so, he must immediately repair it. Ibid. Ibid.

FERRY.

1. The city and police jury both have the right to estab-

lish a ferry before New-Orleans. Police Jury of N. O. vs. Mayor and al. iii. 710.

2. It is no violation of an exclusive privilege to keep a ferry to cross persons, without demanding toll. Chapelle vs. Wells and al. iv. n. s. 426.

FOREIGN LAWS.

1. The courts of this state cannot presume what the laws of other states or foreign countries are: they must be proven. Boggs vs. Reed, v. 673.

FORFEITURE.

- 1. Under the Spanish law, if a creditor take the property of his debtor by force, without judicial authority, he forfeits his claim. Ware vs. Innis, iii. n. s. 117.
 - 2. Aliter, if not taken by force. Ibid. Ibid. Vide Banks, 4. Penalty.

FORGERY.

1. He who alleges that a writing, produced against him, is a forgery, is not obliged formally to disavow it, to be

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allowed to prove the fraud. Gravier vs. Gravier's Heirs, Gravier's Heirs vs. Gravier. Same vs. Same, iii. n. s. 206.

FRAUD.

1. Fraud may be shewn at the trial, without having been alleged in a replication. Skilliman vs. Jones, iii. n. s. 686.

2. The acts of the vendor against the vendee after the sale, are evidence of fraud in the former. Martin vs. Reeves and al. iii. n. s. 22.

3. So also are his declarations as part rerum gestarum. Ibid. Ibid.

4. Fraud is presumed in cases of insolvency. Brandt and al. Syndies vs. Shaumburgh, ii. n. s. 329.

5. A suit to rescind a contract on the ground of fraud must be brought within two years. Mitchel vs. Jewel, i. n. s. 87.

6. Fraud cannot be presumed from the mere circumstance of kindred. Ham vs. Herriman, i. n. s. 535. St. Avid and al. vs. Weimprender's Syndics, ix. 649.

7. To set aside a sale on the ground of fraud, the alienation must be to the injury of the creditor. Baudin vs. Roliff and al. Robertson and al. Interpleaders, i. n. s. 166.

8. An act cannot be attacked as fraudulent after the vendor has paid all his debts. Copelly vs. Deverges, xi. 641.

9. The purchase of a vendor's right only, and a stipulation that the price shall not be payable till the title be confirmed, are not necessarily presumptions of fraud. Prevost's Heirs vs. Johnson and al. ix. 123.

10. Fraud in a deed cannot be alleged by one who claims no right through the person, to the injury of whom the fraud was intended. Sides vs. MCullough, vii. 654.

11. On an allegation of fraud against two, a record to which one of them was a party, may be given in evidence. Trepagnier's Heirs vs. Durnford, v. 451.

12. A fraudulent conveyance gives no title to a party to

the fraud. Bayon vs. Mollere and al. iv. 621.

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13. A fraudulent mortgage is void in the hands of an assignee with notice of such fraud. Parish vs. Syndies of Phillips, i. 61.

14. Transfer of property, in fraud of creditors, void. Debon, Curator of Morgan vs. Beache and al. i. 160, 240.

15. The question of fraud is of the peculiar province of a jury. Ham vs. Herriman, iii. n. s. 155.

Vide Action, 1. Alienation, 6. Banks, 1. Bank Checks, 3. Bankruptcy, 2. Conveyance, 1, 2, 3. Dedimus Potestatem, 2. Heir. Prescription, 4, 5. Sale. Surety. Vendor and Vendee. Insolvent.

FREIGHT.

1. If a freighter refuse to receive goods on the ground that they are damaged, and the master say that they may be received, and the matter will be settled thereafter, the freighter may stop the freight till an allowance be made for the damage. Bernadon vs. Nolte and al. vii. 278.

2. A shipper who prevents the delivery of goods to the consignee must pay the freight. Blake and al. vs. Morgan, iii. 375 and 559.

- 3. If before a ship put to sea, the voyage be put an end to, by a declaration of war, and she be unloaded—the shipper will not be liable for freight. Harrod and al. vs. Lewis and al. iii. 311.
 - 4. If a charterer break the voyage, before sailing, one fourth of the freight will be allowed. Sandry vs. Lynch, i. 57.

GARNISHEE.

- 1. If a garnishee surrender all the property attached, he is not bound to answer interrogatories. Brown & Co. vs. Richardson and al. i. n. s. 210.
- 2. A decree that the garnishee pay to the plff. what he owes to the deft. is tantamount to a judgment. Hanna vs. His Creditors, xii. 32.
- 3. The admission of a garnishee, that he has funds in his hands, is not a voluntary confession of judgment. *Ibid.*
- 4. A garnishee, who claims property attached, and has it delivered to him on bond, is not accountable for any money he afterwards became bound to pay to the deft. and which he did pay. Canfield vs. M'Laughlin, x. 48.
- 5. A garnishee has a right to retain the funds of his creditor, attached in his hands, though he did not expressly admit the fact of his having any—having neglected to answer. Lecesne vs. Cottin, x. 174.
- 6. A garnishee cannot contest the right of a plff. Hanna's Syndies vs. Lauring and al. x. 568.
- 7. The refusal of a garnishee to pay over the funds attached in his hands, on the ground that an illegal seizure

had been made of his goods in another state, in a suit against the deft. his (the garnishee's) creditor, will be sustained, although the judgment on the attachment be given before the termination of the anterior suit, in which his goods were seized. Carrol vs. M'Donogh, x. 609.

8. A garnishee who swears that an illegal attachment has been taken out against him in another state, is not precluded by that declaration from having the proceedings suspended until the result of the first attachment is known. *Ibid. Ibid.*

9. The condition of the bond of a garnishee is complied with by his appearance, and answer to interrogatories.

Laverty vs. Anderson, iv. 606.

10. Judgment cannot be taken against the holder of sequestered property, without his being cited.* Syndics of M'Cullough vs. Fanchonette, i. 120.

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Vide Attachment, 3. Evidence, 155.

GRANT.

- 1. A complete grant prevails over an order of survey. Fleitas and al. vs. Mayor and Aldermen of N. O. i. n. s. 430.
- 2. An arbitrary grant of a Spanish governor may be set aside. Mayor, &c. of N. O. vs. Metzinger, iii. 296.

Vide RESERVATION.

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197. A Themas vs. College if a s. State.

^{*} See the act amending the Code of Practice, passed the 7th April, 1826, sec. 8.

GUARDIANSHIP.

1. A mother may be appointed the guardian of her children. Magdaleine vs. Mayor, i. 200.

HABEAS CORPUS.

1. A prisoner, confined on a mittimus in French, may be brought up on an habeas corpus, and discharged. W. F. Macarty's Case, ii. 277.

2. So also a person charged with an offence, arrested, and ordered to be carried directly to jail. Paul Macarty's Case, ii. 279.

3. So also a prisoner, condemned to fine and imprisonment by the Mayor of New-Orleans. Territory vs. Hattick, ii. 87.

HEIR.

- 1. A beneficiary heir, responsible in his private capacity, is suable in a district court. Martin vs. Heirs of Martin and al. iii. n. s. 48.
- 2. He may sue a widow in a district court for a division of the property of the community. Heirs of Gague vs. Gague and al. iii. n. s. 172. Broussard vs. Bernard and al. iii. n. s. 37. Turner vs. Collins. i. n. s. 369.

3. An absolute heir of full age, is suable in a district court. Ingrem and al vs. Ingrem, iii. n. s. 206.

4. If an heir buy litigious property, he cannot claim the increased value in case of eviction. Gravier vs. Gravier's Heirs. Gravier's Heirs vs. Gravier. Same vs. Same, iii. n. s. 206.

5. If the representative of an estate fall to settle it, the regular course is to compel him to file a tableau of distribution: on failure thereof, he becomes liable in his private capacity. Kenner and al. vs. Duncan's Ex'rs, iii. n. s. 563.

6. An heir who fails to make a correct inventory, loses his right as a beneficiary one. Lecesne vs. Cottin, ii. n. s. 479.

7. He may make the inventory before or after acceptance, or he may accept under an inventory made by another. *Ibid.* 483.

8. An heir is only creditor for his part of a debt, and has no control over the portion of his co-heir. Kilgaur vs. Ratcliff's Heirs, ii. n. s. 299.

9. He cannot receive the object due, if it be not subject to a corporeal division. *Ibid. Ibid.*

10. He who takes the quality of heir, accepts the succession absolutely. Bingey vs. Cox, ii. n. s. 473.

11. Whether a foreigner can be admitted as a beneficiary heir? Lecesne vs. Cottin, ii. n. s. 475.

12. An institution of an heir is not void, because it requires evidence out of the will to identify the individual intended to be instituted. Lafon's Ex'rx vs. Gravier and al. i. n. s. 243.

13. Heirs who take under a will, can do so in the manner it points out only. *Ibid.* 253.

14. When they sue the representative of their ancestor,

or their common tutor, judgment ought not to be for the whole sum due them collectively, but must set forth that due to each. Varion's Heirs vs. Rousant's Syndies, xii. 112.

15. Collateral kinsmen claiming as heirs, must establish the death of relations in the ascending line. Hooter's Heirs vs. Tippet, xii. 390.

16. An heir who has accepted a succession, with the benefit of an inventory is entitled to the possession and administration thereof. Dufour vs. Camfranc, xi. 675.

17. If there be other heirs, their rights will be noticed when they appear. Ibid. Ibid.

18. He who claims as heir, must prove the death of his ancestor—for he is presumed to live till he be one hundred years old. Sassman vs. Aime and Wife, ix. 257. Hayes vs. Berwick, ii. 138.

19. An heir is not estopped by the warranty of his ancestor, unless it be shewn that he accepted the succession.

Leonard's Tutor vs. Mandeville, ix. 489.

20. An heir cannot set aside his ancestor's deed, on the ground that it was made in fraud of his creditors. Terrel's Heirs vs. Cropper, ix. 350.

21. An heir may shew, that a sale made by his ancestor is feigned. Croizet's Heirs vs. Gaudet, vi. 524.

22. So also what sum was paid to his co-heirs, while he was under age, in order to establish the quantum of his share. Trepagnier's Heirs vs. Durnf rd, v. 455.

23. An heir may bring an action of partition against one who has purchased the whole estate from his co-heir. Gravier vs. Livingston and al. vi. 281.

24. An heir is not suable before he accepts the inheritance. Cresse vs. Marigny, iv. 50. Johnson vs. Boon's Heirs, iv. 380.

25. An heir is bound by a judgment, obtained against the administrator. Badnal's Widow and Heirs vs. Baldwin and al. iv. 456.

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26. The right of the presumptive heir to receive the revenues of his ancestor, who has disappeared, is a personal interest and does not partake of the reality. Westover and al. vs. Aime and Wife, xi. 444.

27. If a debtor, on receiving a release, bind himself to pay his debts, if he become able, his heirs will be bound to apply his estate to that purpose. Le Changeur vs. Gravier's Heirs, iv. n. s. 68.

28. But in such case, they will not be bound beyond the value of the estate at his death.* Ibid. Ibid.

Vide Abortion. Absentee, 1, 2. Collation. Curator, 10, 17, 20. Executor. Administrator. Will. Husband and Wife, 1. Renunciation. Servants. Successions. Substitution. Testament. Classification.

HIGHWAY.

- 1. A suit may be maintained by an individual in the district court, for the obstruction of an highway. Allard and al. vs. Lobau, ii. n. s. 317.
- 2. The soil of a highway is public property, and cannot be recovered in a suit by individuals. Renthorp and al. vs. Bourg and Wife, iv. 97. Mayor, &c. of N. O. vs. Metzinger, iii. 303.

Vide RIPARIOUS ESTATE. SERVITUDES.

^{*} See the act relative to insolvent debtors, of the 29th March, 1826, sec. 10.

HUSBAND AND WIFE.

- 1. A husband may sue his wife's heirs in a district court to establish contradictorily with them the amount of the community debts. Broussard vs. Bernard and al. iii. n. s. 37. Turner vs. Collins, i. n. s. 371.
- 2. A woman deceived by a man, who pretends to be single, and her children, born during the deception, are entitled to all the rights of a legitimate wife and children. Clendenning vs. Clendenning and al. iii. n. s. 438.

3. A wife cannot appear in court, without the assent of her husband. Ireland vs. Bryan and al. iii. n. s. 515.

- 4. The matrimonial rights of a wife, who marries with an intention of an instant removal into another country, will be governed by its laws. Ford's Curator vs. Ford, ii. n.s. 574.
- 5. The want of recording a marriage contract cannot be objected to by the husband's representatives. *Ibid. Ibid.*
- 6. When they have different domicils, they are presumed to have submitted themselves to the law of that of the husband. *Ibid.* 577.
- 7. A wife may bind herself jointly and severally with her husband by renouncing the laws of Toro.* Banks. vs. Trudeau, ii. n. s. 39.
- 8. In such case a creditor is not bound to shew that she derived any benefit from the contract. *Ibid. Ibid. Brognier* vs. Forstall, iii. 577.
- 9. She cannot bind herself as surety for her husband; nor even by binding herself in solido with him. Banks vs. Trudeau, ii. n. s. 39. Durnford vs. Gross and Wife, vii. 488.

^{*} See new Civil Code, art. 2412: this article seems to bar such power under any circumstances.

10. An authorization of a husband does not necessarily result from his subscribing an act, by which his wife releases her tacit lien, when he himself by the same act enters into covenants. Turnbull vs. Cebra and al. i. n. s. 611.

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11. A wife must expressly mention the law, the benefit of which she renounces. Ibid. Ibid.

12. An estate of a husband is not chargeable with a sum, which the notarial act shews to have been received by his wife. Faussier vs. Faussier and al. i. n. s. 350.

13. A wife cannot alienate the paraphernal estate, without her husband's consent. Langlini and Wife vs. Broussard, xii. 242.

14. A wife is not bound by a note, in which the name of her husband is written above her's when his signature is denied and not proven, although that of the wife be acknowledged. Lombard vs. Guilliot and Wife, xi. 453.

15. A wife is not bound by a note executed jointly with her husband. *Ibid. Ibid. Durnford* vs. Gross and Wife, vii. 465. Laws and al. vs. Chinn, iv. n. s. 389.

16. It is not necessary that the renunciation of the wife at a sale of her property should be on oath. Lombard vs. Guilliot and Wife, xi. 453.

17. Property acquired by a wife for a valuable consideration during marriage, may be sold by her and her husband. De Armas and Wife vs. Hampton, xi. 552.

18. A husband may proceed without the consent of his wife to the partition of the moveable property of a succession accruing to her. Westover and al. vs. Aime and Wife, xi. 443. Tregre vs. Tregre, vi. 665.

19. Married persons cannot, during the marriage, make to each other by any act inter vivos, or mortis causa any mutual or reciprocal donation. Frederic vs. Frederic, x. 188.

20. A widow has a right to mourning dresses out of the estate of her husband. *Ibid. Ibid.*

21. She has no right to interest on paraphernal property during the year of mourning. *Ibid. Ibid.*

22. If a husband and wife give to the survivor by their marriage contract, the property of the one dying first, provided there be no child born, the donation will be revoked by the birth of a child, and revived by its death. Frideau vs. Frideau, viii. 707.

23. A woman may sue the estate of a man, who married her, his first wife being alive, for her services in his house, the use of her furniture, hire of her negroes, &c. Fox vs. Dawson's Curator, viii. 94.

24. When married persons remove to a new country, their rights as to the property afterwards acquired are regulated according to its laws. Gale vs. Davis' Heirs, iv. 645.

25. Land of a wife, whether dotal or not, is not affected by her husband's debts. Robillard vs. Robillard, iv. 603.

26. If a wife behave outrageously towards her husband, a separation will not be granted her on account of his ill-treatment. Durand vs. Her Husband, iv. 174.

27. A sale of land by a husband to his wife, to replace her paraphernal property, sold by him, is good. *Provost* vs. *Provost and Hennen*, iv. 506.

28. A married woman has a privilege for the amount of her dotal property only. Rion vs. Rion's Syndies, iv. 341 and 591.

29. A husband who appears in an action where his wife is sued for debts, antecedent to the coverture, is only nominally deft.; and his presence is required, not because a judgment can affect him, but because it is necessary that

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he should watch over and protect the interest of his wife, who, during marriage, is considered in regard to judicial proceedings, as a minor. Shiff and al. vs. Wilson, iii. n. s. 93.

30. Whether a wife has a privilege for a debt due her by her husband, before the marriage? Delany vs. Trouve and al. iii. 610.

31. Although a husband and wife sell common property, the wife will not be bound, if she renounce a law not applicable to the case. Bourcier vs. Lanusse, iii. 582.

32. A wife binding herself with her husband, and renouncing the laws in her favor, cannot demand proof of the debt having been contracted for her benefit. Chapillon and Wife vs. St. Maxent's Heirs, v. 166. Brognier vs. Forstall, iii. 577.

33. If a wife have a legacy of the enjoyment of the estate, she takes it on the appraisement made immediately on the husband's death, and pays no interest thereon. Marshal J. and Wife vs. Marshal S. and Wife, v. 695.

34. The debt of a husband cannot be enforced against his widow, if she be not his heir or representative, and did not reside, during the marriage, in a state in which a community of goods exists. M'Kenzie vs. Havard, xii. 101.

35. If a marriage contract express, that the wife brings as her dowry \$2373, in four slaves appraised at \$2200, and the balance in cattle and furniture, the property of the slaves passes to the husband under the Spanish laws.*

Jourdan and al. vs. Williams and al. vi. 659.

36. A husband joining his wife in a suit, is sufficient evidence of his having authorized her to bring it. Laws and al. ys. Chinn, iv. n. s. 388.

^{*} See New Civil Code, arts. 2334, 2335.

37. A wife may renounce her mortgage on her husband's estate. Treme vs. Lanaux's Syndics, iv. n. s. 230.

Vide Acquests and Gains, 1. Alimony, 3. Community of Goods. Demand. Dowry. Feme Covert. Heir. Marniage Contract. Judgment, 26. Marriage. Mortgages, Paraphernal Estate. Possession. Separation from Bed and Board.

HYPOTHECATION.

1. If a ship be hypothecated for a sum to fit her out on a voyage to Liverpool, to become payable on her arrival there, the freight to be received by the lender, who is authorized to insure, and it be provided, that the borrower shall be liable for all expenses, and in the mean time the ship be sold, she will not be liable in the hands of the vendee for the expenses of the homeward voyage. Lloyd vs. M. Masters and al. vii. 249.

Vide Ship's Expenses. Ship owners. Privilege. Mort-

IDENTITY.

1. If a case turn on the identity of property in the deft's possession, which he refuses to let the witnesses see, and there be a verdict in his favor, the court will remand the case for a new trial. Campbell vs. Miller, i. n. s. 514.

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- 1. The issue of an Indian woman, are free. Ulzire and al. vs. Poeyfarre, ii. n. s. 504.
- 2. Some of the Indians were held in slavery under the French government in Louisiana; and the freedom of such was not acquired by the establishment of the Spanish government. Seville vs. Chretien, v. 275.
- 3. Whether when located by the governor of the province of Louisiana they had the use only, or the property of the land allotted to them? Martin vs. Johnson and al. v. 655.
- 4. In Spanish colonies, lands are not assigned to the Indians by survey: they were permitted to occupy a given spot, and the law gave them a right to a league around it. Reboul vs. Nero, v. 490.

INDICTMENT.

- 1. An indictment must expressly state the offence to have been committed within the jurisdiction of the court.

 Territory vs. Nugent, i. 169.
- 2. The caption of an indictment makes no part of it.— Territory vs. M Farlane, i. 221.
- 3. The words vi et armis are not necessary in an indictment for murder. Ibid. Ibid.

INJUNCTION.

1. An injuction will not be dissolved, though improvidently issued, if it appear that posterior circumstances will require that it issue anew. Exnicios vs. Weiss, iii. n. s. 480. Bushnell vs. Brown's Heirs, iv. n. s. 499.

2. It is not in the power of an inferior court to grant an injunction to deprive a party in whose favor it has rendered judgment of the benefit resulting from it on the allegation of any fact which might have prevented the judgment. Lafon's Ex'rs vs. Desessart, i. n. s 71.

3. No injunction can be granted, unless bond and security be given. Lafon's Ex'rx vs. Gravier and al. i. n. s. 243.

4. A deft. may pray that the plff. may be enjoined on his judgment, and that it be deducted from a larger one, which the former is about to obtain against the latter. Muse vs. Rogers' Heirs, xii. 370.*

5. When the law declares that the judgment of a justice shall be executed, notwithstanding an appeal, the execution of it cannot be enjoined. State vs. Judge Pitot, xi. 535.

6. He who resorts to an extraordinary remedy, as an injunction, &c. must, in case of failure, compensate his adversary in damages; and he may be decreed to do so beyond the penalty of the bond. *Jackson* vs. *Larche*, xi. 284.

7. Whether a plff. may be perpetually enjoined from claiming premises? Certainly not, when it is not prayed for in the answer. *Porter* vs. *Dugat*, ix. 92.

8. If a sheriff levy an execution on the property of a

^{*} See the act relative to Injunctions, of the 16th Feb. 1825.

third person, the sale may be enjoined by the judge of the district in which the seizure was made, although the writ issued from another district. Cavelier vs. Turnbull's Heirs. Cavelier Jr. vs. Same. Davenport vs. Same, viii. 61.

9. An injunction not to molest or trouble, does not prevent a suit to ascertain a right. Mayor and al. vs. Magnon, iv. 2.

10. An injunction will not be dissolved till the party answer. Taylor and Hood vs. Morgan, ii. 77.

11. A party cannot on a partial set-off, enjoin the whole execution. Palfrey vs. Shuff, ii. n. s. 51.

12. Nor ought a court to enjoin the execution of its own judgment, because the deft. has acquired claims against the plff. *Ibid. Ibid.*

13. A purchaser at sheriff's sale, cannot have an injunction on the ground that his deed is not in due form of law. Dubreuil vs. Soulier, iv. n. s. 93. Same vs. Same, Ibid. 91.

14. On motion to dissolve an injunction, which is accessary to the principal action, the merits cannot be gone into. Dupau vs. Richardson, iv. n. s. 181.

15. A third possessor, who makes no defence when cited by a mortgagee, cannot afterwards obtain an injunction. Babin and al. vs. Laine and al. iv. n. s. 611.

Vide Sale. Alien Enemy, 2. Bonds, 8. Supreme Court, 9. Renunciation.

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INSOLVENT.

- I. Laws relative to.
- II. Insolvency-how tested.
- III. Insolvency of an estate-how shewn.
- IV. The Schedule.
- V. Stay of Proceedings.
- VI. Proceedings before the Notary, and how certified.
- VII. What property must be ceded, and what not.
- VIII. Homologation of proceedings, and opposition thereto.
 - IX. Sale of his property.
 - X. Expenses of Liquidation.
- XI. Privileges on the estate-who has, and who has not.
- XII. Illegal and void proceedings.
- XIII. Admissions and Testimony of an Insolvent.
- XIV. Discharge of.
 - XV. Foreign Discharge.
- XVI. Commissioners of.
- XVII. Insolvent generally.

LAWS RELATIVE TO.

- 1. The act of 1817 does not deprive insolvents, who had not a year's residence, of any right which they had before. Shreve vs. His Creditors, xi. 30.
- 2. The Spanish insolvent laws were not repealed by the adoption of the constitution of the United States. Ray and al. vs. Cannon and al. ii. n. s. 26. Shreve vs. His Creditors, xi. 30.

II. INSOLVENCY—HOW TESTED.

3. Insolvency cannot be better tested, than by a return

of nulla bona, on an execution against one. Taylor vs. Curtis, iii. n. s. 132.

III. INSOLVENCY OF AN ESTATE—HOW SHEWN.

4. Legal means of shewing the insolvency of an estate, is by a settlement of it in the court of probates. Semple vs. Fletcher, iii. n. s. 382.

IV. THE SCHEDULE.

5. A creditor not placed on the schedule, is not affected by the proceedings. Russel vs. Rogers and al. ix. 588.

6. If a schedule be not filed, proceedings will not be stayed on a cessio bonorum. John Grieve's Case, i. 194.

7. An insolvent is bound to put all his creditors on his bilan. Herring vs. Levy, iv. n. s. 383.

8. He will not be excused for not doing so, because he may be ignorant of the name of an endorsee, who may hold one of his notes. *Ibid. Ibid.*

V. STAY OF PROCEEDINGS.

9. A person against whom a stay of proceedings has been obtained, is incapable of appearing in court in relation to his property. Menard vs. Rust and al. i. n. s. 62.

10. When an an insolvent applies to a court for relief, all suits depending against him in other courts are suspended, and his creditors must proceed in the court to which he has applied. Cox vs. Zeringne, iv. 261.

11. A creditor, whose debt is denied, may sue notwithstanding the stay of proceedings. Blois vs. Denesse, ii. 175.

12. If there be danger, a debtor's goods will be seized notwithstanding the stay. Picket and Lacroix vs. More, ii. 113.

13. An order for a stay of proceedings, and a call of creditors, make them all parties, and any of them may come in and shew that he is injured by the proceedings. Wikoff and al. vs. Duncan's Heirs, x. 667.

14. Till there be a stay of proceedings, any creditor

may sue or attach. Fisk vs. Chandler, vii. 24.

15. An order of a stay will be rescinded, if the cession be not made at the meeting of creditors. Deglane vs. His Creditors, iv. 697.

- 16. Proceedings are stayed by a cession before and after judgment. Syndics of Bermudez vs. Ibanez and Milne, iii. 17.
- 17. A judge's order for a stay, stops all proceedings against an insolvent, whether against his person or his property. Elmes vs. Estevan, i. 192. David vs. Hearn, i. 207.

VI. PROCEEDINGS BEFORE THE NOTARY, AND HOW CERTIFIED.

- 18. Creditors who prove their debts at a meeting, need not renew their proof at a subsequent one. Seghers vs. His Creditors, x. 51.
- 19. A notary cannot certify any thing that took place at a meeting of creditors, otherwise than by a copy of his minutes. *Ibid. Ibid.*
- 20. With regard to a fact, which does not appear therein, he must be sworn. *Ibid. Ibid.*
- 21. Claims of creditors may be investigated previous to the appointment of syndics. Planters' Bank and al. vs. Lanusse and al. x. 690.
- 22. When the amount claimed by a creditor is disputed, the party disputing it has a right to demand a jury for the trial of the facts at issue. *Ibid. Ibid.*

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23. Three creditors are essential to the formation of a concurso, but their presence is not necessary to the meeting. Turcas and al. vs. Leglisc, iv. n. s. 462.

VII. WHAT PROPERTY MUST BE CEDED, AND WHAT NOT.

24. A debtor must give up all his property—he cannot say that he has delivered enough to pay his debts. Duncan and Jackson's Syndies vs. Duncan, iii. 230.

25. An insolvent ought not to cede the goods of another in his possession. Ritchie and al. Syndics vs. White and al. xi. 239.

VIII. HOMOLOGATION OF PROCEEDINGS AND OPPOSITION THERETO.

26. "That the election of syndics was not legally made, because the persons who voted were not creditors to the amount stated, nor had any claim," is too general a ground of opposition to the homologation of the proceedings. Bierra vs. His Creditors, ii. n. s. 47.

27. A judgment of homologation is not complete, till signed by the judge. Abat vs. Michel, i. n. s. 240.

28. A creditor who was present at a meeting, and did not object to any vote, cannot oppose the homologation of the proceedings on the ground that proper powers were not produced. Seghers vs. His Creditors, x. 54.

29. A judgment of homologation must, agreeably to the constitution, contain the reasons upon which it is grounded. *Ibid. Ibid.*

30. A creditor opposing the homologation of the proceedings, must state specially the grounds of his opposition,

and is not allowed to allege irregularity generally. Desbois vs. Segher's Syndies, viii. 67.

31. After an homologation, it cannot be objected that the proceedings of the creditors were recorded in French. Dussuau's Syndics vs. Bredeaux, iv. 450.

32. Opposition to the homologation of a tableau of distribution, must be made in writing. Ludeling vs. His Creditors, iv. n. s. 601.

33. A tableau of distribution cannot be homologated till the creditors are cited; and this should appear upon the record.* Bargebur and al. vs. Their Creditors, iv. n. s. 620.

IX. SALE OF HIS PROPERTY.

34. The law has fixed no period, during which the sale of an insolvent's property must be advertised. Saulet vs. Dreux's Syndics, iii. n. s. 615. Freret vs. Same, iv. n. s. 76. Pilie vs. Same, Ibid. 75.

35. When there exist mortgages on the property ceded by an insolvent, it must be sold by the syndics for cash. Lewis vs. Boissier's Syndics, i. n. s. 495.

36. If the property of a bankrupt be sold, without the formalities prescribed by law, it still belongs to the estate. Crum and al. vs. Laidlaw and al. Syndics, x. 471.

37. A sale of ceded property, made by an insolvent, is voidable, not void. Syndics of Seghers vs. Brown, iii. 91.

X. EXPENSES OF LIQUIDATION.

38. The expenses of the liquidation of an insolvent's es-

^{*} See the act of the 20th Feb. 1817, relative to the voluntary surrender of property. Also, the act of the 29th March, 1826, on the same subject.

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tate, are to be paid out of the unincumbered property ceded; but if that be insufficient, out of the rest. Goforth vs. His Creditors, vi. 519.

XI. PRIVILEGES ON THE ESTATE—WHO HAS, AND WHO HAS NOT.

39. A wife has a privilege on the estate of her insolvent husband, for the amount of her paraphernal property, disposed of by him. Dreux vs. Dreux's Syndics, iii. n. s. 239.

40. A judgment rendered, but not signed at the time an insolvent makes a cessio bonorum, confers no privilege over other creditors. Terry and al. Syndics vs. Shamburgh, x. 24.

XII. ILLEGAL AND VOID PROCEEDINGS.

41. Proceedings in another court than that seized of the concurso, by a party to it, are illegal and void. Syndies of Menard vs. Pierce and al. iii. n. s. 375.

42. Proceedings of a meeting of the creditors of an insolvent recorded in the French language, are irregular. Durnford vs. Segher's Syndics, vii. 409.

XIII. ADMISSIONS AND TESTIMONY OF AN INSOLVENT.

43. Mere proof that the insolvent admitted the debt, and even his written acknowledgment, will not establish it against his estate, unless circumstances render it probable. Planters' Bank and al. vs. Lanusse and al. xii. 157.

44. The testimony of an insolvent cannot be received in a suit between a creditor and the syndics. Seghers vs. Moulon's Syndics, ii. n. s. 608.

51. One who mea obtained in respire, and mentiones a

XIV. DISCHARGE OF.

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45. An insolvent may be discharged after the day on which the creditors were summoned, if they do not shew cause to the contrary on the day appointed for that purpose. *Martin's Case*, ii. 78.

46. The discharge of one member of a firm under the insolvent laws, does not release the others. Russel vs. Rogers and al. ix. 588.

XV. FOREIGN DISCHARGE.

47. A discharge in a sister state, which liberates the person of the debtor, but leaves the contract in force, does not protect him from imprisonment here. *Morris* vs. *Eves*, xi. 731.

XVI. COMMISSIONERS OF.

48. The commissioners of an insolvent must make their return under seal. Spencer's Case, ii. 149.

XVII. INSOLVENT GENERALLY.

49. If an insolvent make a promise to his creditors to pay them in case he come to better fortune, and die, leaving sufficient property to pay three-fourths of his debts, a release of any creditor will not enure to the benefit of the others, but to the debtor's heirs. Le Changeur vs. Gravier's Heirs, ii. n. s. 545. Same vs. Same, iv. n. s. 68.

50. An insolvent cannot employ counsel after his failure, at the cost of his estate. Seghers vs. Moulon's Syndies, ii. 2. 5. 608.

51. One who has obtained a respite, and meditates a

removal, may be arrested and his goods seized. Pecquet and al. vs. Golis, i. n. s. 439.

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52. And when before the judge, his person and goods may be secured, notwithstanding any defect in the process on which he was brought up. *Ibid. Ibid.*

53. The creditor may pursue his remedy against an insolvent, till a stay of proceedings arrests him. Hanna vs. His Creditors, xii, 34.

54. If a firm be insolvent, and two of the partners be indebted to it, their debt passes to the creditors of the firm. Ward vs. Brandt and al. Syndies, xi. 333.

55. If a debtor cede his goods, before a judgment against him be signed, the syndics must be brought in. Shaumburgh vs. Torry and al. Syndics, x. 178.

56. A payment by an insolvent, out of the ordinary course of business, on the eve of bankruptcy, is void. Ritchie and al. Syndies vs. Sands and al. Syndies, x. 704. Meeker's Assignees vs. Williamson and al. Syndies, iv. 625. Brown vs. Kenner and al. iii. 277. Canfield and al. vs. Maher and al. iv. n. s. 174.

57. An insolvent cannot contest the legality of the choice which his creditors make of syndics. Seghers vs. His Creditors, viii. 136.

58. He cannot complain of irregularity in the proceedings after a forced surrender is ordered: it is a question in which the creditors alone are concerned. Dyson and al. vs. Brandt and al. ix. 494.

59. A ceding debtor who has obtained no discharge, is suable by the simple contract creditor, although it appear that the privileged creditors will absorb all the estate, even before its liquidation. *Fitzgerald* vs. *Philips*, iv. 559.

60. A ceding debtor has his remedy against his creditors, if the syndics waste the property ceded. *Ibid. Ibid.*

- 61. When two suits for a forced surrender are carried on at the same time, an order for a stay of proceedings, made on a second application, does not prevent the insolvent from contesting the legality of the first. Ward vs. Brandt and al. ix. 625.
- 62. If the year of residence of an insolvent debtor expire after he has been confined thirty days, and he apply for the benefit of the insolvent laws within thirty days after the expiration thereof, he cannot be relieved.* Rhendorff vs. His Creditors, iv. 329.
- 63. Some property to be ceded, is not required to entitle a debtor to relief under the insolvent laws. Miles vs. His Creditors, vi. 500.
- 64. If creditors refuse the cession of a debtor's goods on an allegation of fraud, though the court direct an assignment to be made in trust to the sheriff, the insolvent is not entitled to a discharge. W. and L. Crommelin vs. Their Creditors, v. 78.
- 65. A conveyance made by an insolvent on the eve of a cession, the consideration for which was not paid at the time, is void. Roussel vs. Dukeylus' Syndics, iv. 218.
- 66. A conveyance of real property by an insolvent to a creditor, on the eve of a cession, in discharge of a debt for which he had a lien thereon, is void. Meeker's Assignees vs. Williamson and al. Syndics, iv. 625.
- 67. An insolvent is not allowed to withdraw his petition after a suggestion of fraud. Clague and al. vs. Lewis and al. iv. 673.

^{*} By an act of the 18th of March, 1822, all laws which required a residence to enable any one to fail, are repealed.

68. In general, a ceding debtor who has no release, is not suable till the property ceded be liquidated. Fitzgerald vs. I hillips, iv. 290.

69. A ceding debtor, without a discharge, is suable.

Same vs. Same, iii. 588.

70. Payment by an insolvent in the usual course of business before failure, is valid. Brown vs. Kenner and al. iii. 278.

71. An insolvent cannot mortgage his property. *Ibid.* 1bid. 270.

72. Transfer of property, in fraud of an insolvent's creditors, is void. Debon, Curator, &c. vs. Bache and al. i. 240.

73. The endorser of an insolvent, who is also the debter of such insolvent, has a right to be placed on his bilan for the balance of account. Moulon vs. His Creditors, iv. n. s. 29.

74. A party who has made a cession of his goods, loses the capacity of standing in judgment. Goodwin vs. Chesneau and al. iv. n. s. 103.

75. When a cession is accepted and a syndic appointed, the insolvent has no power to affect the rights of the creditors who voted for syndics, and bring the proceedings before the court.* Bargebur and al. vs. Their Creditors, iv. n. s. 620.

Vide Bail, 19. Bills of Exchange and Promissory Notes, 89. Citation, 6. Constitutional Law, 8. Conveyance. District Courts, 4. Creditors, 4, 5, 6, 8, 10. Debtor and Creditor, 2. Debtor in Confinement, 3. Evidence, 113, 117. Fraud, 4, 14. Heir, 27, 28. Cessio Bonorum. Bankruptcy. Surrender. Syndics. Lien. Mortgages. Notice.

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^{*} See the acts of the 20th Feb. 1817, and 29th March, 1826, relative to Insolvents.

PARTNERSHIP. PRACTICE, 100, 108. PRESCRIPTION, 5. PRIVI-LEGE. RES INTER ALIAS ACTA. RESPITE. SET-OFF AND COMPEN-SATION. UNITED STATES. VENDOR AND VENDEE.

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INSURANCE.

1. The insured may in all cases abandon as for a total loss, when the thing insured has been injured to the amount of half its value. Hyde and al. vs. Louisiana State Ins. Co. ii. n. s. 410. Brook and al. vs. The Same, iv. n. s. 640.

2. Whether the insured may abandon, when there has been a total loss, in case the insurers will not undertake to repair the vessel? But the insured cannot claim this right, if he abandon without calling on the insurers to make the

repair. Ibid. Ibid.

- 3. If a ship become unnavigable from age or rottenness, the insurer is not responsible, if the injury she has sustained be such that her unsound and decayed parts cannot be used as before the accident, without repairs equal to half her value, the insured may abandon. But if repairing the injury arising from one of the risks insured against, will replace her in her former situation, no matter how unsound, the insured cannot abandon. Ibid. Ibid.
- 4. Insurance may be made on freight to be earned. Cole vs. Louisiana Ins. Co. ii. n s. 167.
- 5. If the copper be taken off a vessel, this being necessary on account of an injury she has sustained, the insurers cannot avail themselves of its being done without their consent. Waller vs. Louisiana Ins. Co. ix. 276.
 - 6. The sentence of a foreign court of admiralty is con-

clusive evidence of the national character of a ship. Blanque vs. Peytavin and al. iv. 458.

- 7. A vessel not being sea-worthy when she sails, will prevent the insured from recovering. Trimble's Syndics vs. N. Orleans Ins. Co. iii. 394.
- 8. In a policy of insurance the written controls the printed part. Brook and al. vs. Louisiana State Ins. Co. iv. n. s. 640.
- 9. The insured will recover on a valued policy, although the invoice cost of the goods be below the sum insured. Akin and al. vs. Mississippi Marine and Fire Ins. Co. iv. n. s. 661.
- 10. If an insurance be made on a voyage to Key West and the Havana, and the vessel unnecessarily proceed to the latter place first, it will be a deviation. *Ibid. Ibid.*
- 11. But if she do so through stress of weather, and the voyage to Key West fail, recovery may be had for a total loss. *Ibid. Ibid.*

Vide Average. Barratry. Condition. Jettison. Salvage.

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INTERDICTION.

- 1. A sentence of interdiction cannot be pronounced on ex parte evidence. Stafford vs. Stafford, i. n. s. 551.
- 2. The acts of a person anterior to his interdiction will not be avoided if his insanity was not notorious. Louisiana Bank vs. Dubreuil, v. 416.

Vide VENDOR AND VENDEE, 11.

INTEREST.

- I. Legal Interest and Interest generally.
- II. Conventional Interest.

I. LEGAL INTEREST AND INTEREST GENERALLY.

- 1. Interest is due on the price of a slave from the time it became payable. Hepp and al. vs. Ducros and al. iii. n. s. 185.
- 2. It is included in the legacy of a debt. Hepp and al. vs. Lafonta's Ex'rs, ii. n. s. 446.
- 3. If it be promised to be paid on a privileged debt, the interest is not privileged. 'D'Auterive vs. Degruy, ii. n. s. 116.
- 4. It is calculated from the maturity of a note to the day of a partial payment, and added to the principal: the partial payment is then to be deducted from the aggregate. Hynson and al. vs. Maddens and al. i. n. s. 571.
- 5. A promise to pay interest on the renewal of a note, means bank interest. Boismarre vs. Jourdan, i n. s. 304.
- 6. Interest does not run on an unliquidated demand from the time of the judicial demand * Lafon's Ex'rs vs. Riviere's Ex'rx, i. n. s. 130. Andry and al. vs. Foy, vi. 689. Pierce vs. Flower and al. v. 388.
- 7. An usage to charge interest at the rate of ten per cent. cannot be regarded. Harrod and al. vs. Lafarge, xii. 21. Duplantier vs. St. Pé, iii. 137.
- 8. Tutors are not to pay compound interest. Jarreau vs. Ludeling, xii. 106. Bludworth vs. Sompeyrac, iii. 719.

^{*} A contrary opinion in 3 M. 318, overruled by this.

9. Interest is generally due from the judicial demand only. Surgat vs. Potter and al. xii. 365.

10. It may be stipulated from the date of a note in case it be not punctually paid. Lauderdale vs. Gardner, viii. 716.

11. It cannot be claimed under the custom of merchants, when the goods do not appear to have been bought for the purpose of trade, and the vendee be not a merchant. Davis vs. Turnbull and al. vii. 228.

12. Interest may be given on damages in case of a tort. Guillot vs. Armitage, vii 710.

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13. If illegal interest has been paid, the difference between five per cent. the legal interest, and the rate at which it has been paid, must be imputed to the principal. Durnford vs. Bariteau, v. 501.

14. It is not to be allowed on a purchase on credit.

Decuir vs. Packwood, v. 300.

15. It is due on every instalment, when the vendee has possession of the land sold. Duplantier vs. Pigman, iii. 236.

16. Interest will not be recovered, if not sued for with the principal. Faurie vs. Pitot and al. Syndies, &c. ii. 83.

17. Interest not stipulated in a note, cannot be established by parol evidence. Toussaint vs. Delogny, ii. 78.

18. A convention to pay the usual interest when there is no uniform usage, is too vague and uncertain to fix upon and determine any other rate than the general one, which is settled and established by law. Mercier's Adm'x vs. Sarpy's Adm'x, i. 71.

19. The usual, is the legal interest. Segur vs. His Creditors, i. 75.

20. Interest cannot be allowed on a sum awarded in a

verdict, which was before unliquidated.* Morgan vs. Bell, iv. 615. Foster and ul. vs. Dupre, v. 6.

II. CONVENTIONAL INTEREST.

- 21. Conventional interest promised on the price for three years, does not run in case of further indulgence. Hepp and al. vs. Ducros and al. iii. n. s. 185.
- 22. Conventional interest cannot be proven by parol evidence. Harrod and al. vs. Lafarge, xii. 21.
- 23. Writing is not of the essence of the contract to pay conventional interest. Delacroix vs. Prevost's Ex'rs, vi. 276.
- 24. Conventional interest, not above the customary rate, is lawful. Caisergues vs. Dujarreau, i. 7.

Vide Execution, 16. Usury.

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INTERPRETATION.

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1. When the natural meaning of the words of an act, presents no ambiguity, no interpretation is necessary.

Waters vs. Backus, viii. 1.

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INTERROGATORIES.

- 1. Interrogatories, propounded to a party to a suit, can-
- * By an act of 1821, p. 44, it is provided that, "Interest shall run on bills or notes from the day they were regularly protested for non-payment, any law to the contrary notwithstanding."

not be answered by his agent. 'Buford vs. Valentine, iii. n. s. 57.

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on nt, 2. Answers to interrogatories cannot be divided. Hunter vs. Smith, iii. n. s. 109. Crummen vs. Cavenah, i. n. s. 532. Rogers vs. Parmetti, i. n. s. 332. Bradford's Heirs vs. Brown, xi. 217. Scull vs. Mowry, ii. 275.

3. If an answer to interrogatories be evasive, the case will be remanded. Bird vs. Bowie, iii. n. s. 112.

4. If part of a plff's answer to interrogatories be stricken out, the deft. cannot have farther time to except to what remains. Clay vs. Oldham, iii. n. s. 276.

5. If a party file interrogatories to be answered by a witness, whose deposition is to be taken, and the adverse party file his under them, the latter cannot object at the trial to the interrogatories of the former, that they are leading ones. Sowers vs. Flower and al. ii. n. s. 617.

6. A dest's answer to a plsf's interrogatories need not be included in the answer to the petition. Seal vs. Erwin and al. ii. n. s. 245.

7. A fact added by the party, answering interrogatories to his answer, is not to be stricken out, because not called for by the interrogatories. Maxwell and al. vs. Gunn, ii. n. s. 140. Bradford's Heirs vs. Brown, xi. 222.

8. An evasive answer creates a violent presumption, that a direct one would be against the interest of the party interrogated. *Barrow* vs. *Sterling*, ii. n. s. 55.

9. A deft. who proceeds to trial, cannot afterwards demand a dismissal of the suit, because there is no legal evidence of the plff's answer to his (the deft's) interrogatories having been sworn to. Dean, for the use of Vineyard vs. Smith and al. xii. 316.

10. A deft. sued on a note, may be required to answer

on oath, whether he did not subscribe and the payee endorse it? Bullet vs. Serpentine, xii. 393.

11. The capacity and signature of a justice of the peace to the jurat, of an answer to interrogatories, are not to be certified as a record of a court under the act of congress. Gitzandener vs. Macarty, x. 70. Woolsey vs. Paulding, ix. 280.

12. It a deft. do not move to dismiss a suit, for the want of an answer to his interrogatories, he cannot assign such want of answer as error. *Ibid. Ibid.*

13. At the trial, the deft's counsel may object to the reading of the plff's answers to his interrogatories, on the ground that they do not appear to have been made before a person legally authorized. *Ibid.* 71. Center vs. Stockton and al. viii. 208.

14. A plff may read his answer to supplemental interrogatories, although he fail to answer the original ones. Woolsey vs. Paulding, ix. 280.

15. If the same interrogatory be put in the original and supplemental answer, and the plff. having failed to answer it with the others in the original, but does so with those in the supplemental, the interrogatory will not be taken as admitted, and the answer may be read. *Ibid. Ibid.*

16. A party putting interrogatories is concluded by the answer, unless he disprove it by two witnesses. Richardson vs. Terrel, ix. 1.

17. Answers to interrogatories, received by a mayor, and accompanied by the certificate of the governor and the seal of the state, are sufficiently authenticated. Woolsey vs. Paulding, ix. 280.

18. A party who is required to answer an interrogatory, which he is not bound to answer, ought to move to have it stricken out: if he answer it, however, he will be con-

cluded thereby. Delacroix vs. Prevost's Ex'rs and al. vi. 280.

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19. An interrogatory may be put to an executor. *Ibid.*

20. A party may avail himself of his answer to an interrogatory, put to him by the adverse party. Berthole vs. Mace, v. 576.

21. Whether the whole answer to interrogatories be evidence for the respondent? Read vs. Baily, ii. 60.

22. Whether a deft. may be interrogated as to his signature to a note, with a subscribing witness? Gray and al. vs. Gentry, ii. 154.

23. A plff. need not have a judge's order to have his interrogatories answered; but he cannot file new ones, without the leave of the court. Read vs. Bailey, ii. 296.

24. No law requires interrogatories to be served on the adverse party. Clay's Syndies vs. Kirkland, iv. 405.

25. The answer to interrogatories may be extended to a fact denying the debt. Taylor and Hood vs. Morgan, i. 204.

26. The service of interrogatories to be put to a witness, does not dispense with notice of the time and place of examination. Bouman vs. Flowers, ii. n. s. 267. Doane vs. Farrow, ix. 222.

27. A party interrogated on facts and articles, cannot by his answer make the copy of an instrument evidence, without accounting for the loss of the original. Lafarge vs. Ripley, iv. n. s. 303.

28. Nor make a conversation between himself and a third party, in the absence of his adversary, evidence against the latter. *Ibid. Ibid.*

Vide Answer, 3. Practice, 134 to 139. Evidence.

INVENTORY.

1. An inventory is incorrectly made, without the presence of the under tutor. Frere and al. vs. Frere and al. i. n. s. 462.

Vide WIDOW.

ISSUE.

- 1. An issue, the object of which is to obtain a general finding, cannot be specially submitted to a jury. Fonte-neav's Heirs vs. Perot, v. 202.
- 2. The act directing the submission of particular issues to a jury, is not unconstitutional. *Maurin* vs. *Martinez*, v. 432.
- 3. The time at which a person was made a party to a suit is a matter of record, and cannot be submitted to a jury. *Ibid. Ibid.*

Vide PRACTICE. ANSWER.

JETTISON.

1. The owner of goods, shipped on deck, is not entitled to contribution, in case of jettison. Hampton vs. Brig Thaddeus and al. iv. 582.

Vide INSURANCE.

JOINT OWNERSHIP.

1. A joint owner is liable for common neglect. Ralston vs. Barclay and al. vi. 649.

2. If he be in the habit of insuring, or of having the common interest insured, and insures his own half only, he will be liable to his co-owner for the loss of the vessel

thus partially insured. Ibid. Ibid.

3. If the share of a part owner of a steam boat be attached, and the other owners obtain the delivery of the boat, on giving bond to abide the judgment of the court, their liability will not exceed the amount of the deft's interest in the boat. Nancarrow vs. Young and al. vi. 662.

4. A joint owner is bound to take the same care which prudent men do of their own property. Guillot vs. Dossat,

iv. 203.

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Vide PARTNERSHIP, 34.

JUDGES.

- 1. A judge need not in all cases, refer to the particular law under which he decides. Henderson, use of Hunter vs. Bowles, iii. n. s. 152.
- 2. The judges of the late superior court, were made judges of the supreme court, by the schedule to the constitution. ii. 162.
- 3. If a case be remanded with the view of correcting a partial error, the judge a quo acts correctly in assuming

a former report of referees, not excepted to, as the state of the accounts between the parties, and in ordering a partial reference only, with the view to comply with the decision of the supreme court.* Parquin vs. Finch and al. iii. n. s. 27.

Vide Affinity. Amendment, 2, 4. Bills of Sale. Certificate, 2, 4, 5, 8, 11. Supreme Court. Practice, 168. Referees. Statement of Facts.

JUDGMENT.

1. A judgment of dismissal is nothing more than a nonsuit, and does not form rem judicatam. Baudin vs. Roliff and al. Robertson and al. Interpleaders, i. n. s. 165.

2. When in tracing title, a judgment makes part of the muniments of an estate, it is not necessary to give the pro-

ceedings on which it is founded. Ibid. Ibid.

- 3. Strangers to a judgment, cannot be permitted to attack it on the ground of irregularity, or that it was rendered on insufficient evidence. *Ibid. Ibid.*
- 4. A demand for six hundred and forty dollars and the expenses of protest, will support a judgment for six hundred and forty-six dollars. Peytavin vs. Paloe, i. n. s. 153.
- 5. A judgment rendered against a party, not cited, is void. Bernard vs. Vignaud, i. n. s. 1.
- 6. So also is one against a person legally incapacitated to defend himself. *Ibid. Ibid.*

^{*} See the act of the 9th Jan. 1825, relative to challenges to judges on account of interest.

7. So also is one against a person privileged from judicial pursuit. *Ibid. Ibid.*

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8. A stranger to a judgment may collaterally question its validity. *Ibid. Ibid.*

9. When judgment is taken by default, the verdict cannot be for the deft. although no damage be proved. Allen vs. Lioteau, ix. 459,

10. A judgment which does not contain the reasons upon which it is founded, whether void or voidable? Doubrere vs. Papin, v. 499.

11. It suffices if the reasons appear by a reference to the petition. *Ibid. Ibid.*

12. The reasons must be inserted in a judgment by default. - Montserrat vs. Godet, v. 522. Doubrere vs. Papin, Ibid. 498. Urquhart's Ex'rs vs. Taylor, Ibid. 201. Poston vs. Adams, Ibid. 272. Sierra vs. Slort, iv. 587. Gray and al. vs. Laverty and al. Ibid. 463.

13. So also in one rendered on the verdict of a jury.

Muse vs. Curtis, v. 686. Slocum vs. Sibley, Ibid. 682.

14. A judgment which contains none of the reasons on which it was given, nor any reference to the law, is null. Gray and al. vs. Laverty and al. iv. 463.

15. A judgment is sufficiently certain, when its amount appears from the documents. Decker's Ex'rs vs. Bradford's Heirs, iv. 311. Melancon's Heirs vs. Duhamel, iii. n. s. 7.

16. A judgment rendered at Baton Rouge, before the United States took possession of the country, is not a foreign one. Terry vs. Patton and Wife, iv. 301. Decker's Ex'rs vs. Bradford's Heirs. Ib. 311.

17. A judgment may be so far final, as to be appealable from, without being so as to the point in issue. Clay vs. His Creditors, ix. 519.

- 18. Three judicial days must elapse before a judgment by default becomes final. Gorham vs. De Armas, vii. 359,
- 19. A judgment by default may be made final, even when the object of the suit is the recovery of land. Fleming vs. Conrad. xi. 301.
- 20. A judgment against three cannot be reversed in toto, on the appeal of two alone. Kenner and al. vs. Duncan's Ex'rs, iii. n. s. 563. Brown and al. vs. Brown's Ex'rs, ii. n. s. 445.
- 21. The validity of a decree of a court of competent jurisdiction, cannot be examined collaterally by the parties thereto, or those who claimed under them. Kilgour vs. Ratcliff's Heirs, ii. n. s. 292. Dufour vs. Camfranc, xi. 607.

22. A court need not give any reasons for a judgment taken by default on a liquidated claim. De Hart vs. Berthoud and al. vii. 440. Allard vs. Ganushau, iv. 662.

- 23. If judgment be claimed for \$673 35, it may be given therefor, although the verdict be for \$673 75. Gould vs. Bridgers, iii. n. s. 692.
- 24. A judgment cannot exceed the sum claimed in the petition. Barckley and al vs. Evans' Ex'rx, ii. n. s. 241.
- 25. That the plff. has proven his allegations, which were denied by the deft. is a sufficient reason, to sustain a judgment. Shuff vs. Palfrey, ii. n. s. 50.
- 26. The want of publication of a judgment of separation of property obtained by a wife, does not render it ipso facto void. Turnbull vs. Davis and al. i. n. s. 568.
- 27. The circumstance of a judgment being rendered on a petition written in French does not make it void. Quere, if voidable? Bouthemy vs. Dreux and al. xii. 639.
- 28. A judgment may be signed after the expiration of the third day after which it was pronounced. Thompson vs. Chretien and al. xii. 250.

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of vs. 29. A judgment is improperly signed after a debtor has made a cession of his estate. Clark vs. Oddie, iv. n. s. 625.

30. A judgment against two, which does not state that the parties are condemned in solido, makes each responsible for his virile part. U. States and al. vs. Hawkins' Heirs, iv. n. s. 317.

31. A judgment is presumed to follow the obligation it enforces. Ibid. Ibid.

32. But when the prayer in the petition does not follow the obligation, this presumption does not exist. *Ibid. Ibid.*

33. A judgment given on erroneous evidence is valid, until reversed. Clark's Heirs vs. Barham's Heirs, iv. n. s. 411.

34. A judgment by default, will not be set aside on the defendant's affidavit of a good and equitable defence. Raoul vs. Daubois, ii. 151.

Vide Acts of Assembly, 8, 9. Adjudication, 1. Attorneys, 44. Consolidation, 1, 3. Supreme Court. Executor, 2. Garnishee, 10. Lien. Mortgages. Nonsuit. Notice. Nullity. Parish Judge. Practice, 100, 113, 149, 150. Referees. Res Judicata. Third Party. Warranty.

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JUDICIARY.

1. The judiciary possess the power to declare laws, contrary to the constitution, void. Le Breton vs. Morgan, iv. n. s. 138.

JURISDICTION.

1. Jurisdiction, once obtained, cannot be divested or suspended by the act of any of the parties, pendente lite; and this applies to all the incidents of the cause. Freeland vs. Lanfear, ii. n. s. 262. Richardson vs. Packwood, i. n. s. 301.

2. The courts, in this state, do not lose jurisdiction in suit, by the death of the deft. and the opening of his sue

cession abroad. Lecesne vs. Cottin, ii. n. s. 475.

3. When a court has no jurisdiction over the subject of the suit, no admission of the parties can give it. Abat and al. vs. Songy's Estate, vii. 274.

4. The jurisdiction of the old superior court extended to the Sabine. Territory vs. Durossat and al. ii. 120.

5. Want of jurisdiction may be waived, when the exemption is personal—not when the tribunal has no jurisdiction of the matter. Dupey and al. vs. Greffin's Ex'r, i. n. s. 201.

6. A court may at any state of a cause dismiss it, if it appear that it has no jurisdiction of the case. Lafon's Ex'rs vs. Lafon, i. n. s. 703.

7. An attorney appointed by a court cannot give it jurisdiction by pleading informally. Debuys and al. vs. Yerby, Ex'r, i. n. s. 380.

Vide ABATEMENT, 3. SUPREME COURT. DISTRICT COURTS, 2, 3, 5, 8. COURTS OF PROBATES. COURT FOR THE PARISH AND CITY OF NEW-ORLEANS. CURATOR, 1, 2, 6, 11. EXECUTOR, 24. HEIR, 1, 2, 3. HIGHWAY. HUSBAND AND WIFE, 1. PRACTICE, 7.

JUROR.

1. Either party discovering at a second trial that a juror served on the first, may demand his removal. Henry vs. Cuvillier, iii. n. s. 524.

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- 2. Forty-eight jurors must be returned to each term of the parish court of New-Orleans. Flower vs. Livingston, nii. 681.
- 3. Whether a challenge to the competency of a juror should be made before he is sworn? Livingston vs. Heerman, ix. 656.
- 4. A juror improperly summoned, may be discharged on his own motion. Auzan's Case, ii. 125.
- 5. A person who rents a store, and boards out, is not liable to serve as a juror. Parmele's Case, ii. 313.
- 6. A juror who tried a suit against an endorser, is not incompetent to try one against another endorser. Nugent vs. Trepagnier, ii. 205.
- 7. A juror who has given an opinion, may be rejected, though he swear that his mind is still open to conviction. Laverty vs. Gray and Taylor, iii. 617.
- 8. The affidavit of a jury is not admissible to impeach the verdict of the jury on account of misconduct. * Campbell vs. Miller, i. n. s. 514.

^{*} See Code of Practice, commencing at article 493. Also, the act of the 9th Jan. 1825, relative to challenges to judges, jurors, &c. and the act of the 27th Feb. 1826, amending the existing laws relative to juries.

JURY.

1. A venire is not vitiated by the impossibility of summoning the number of jurors drawn. Cox vs. Wells and al. iii. n. s. 158.

2. Talesmen may be summoned before exhausting all the legal means of compelling the attendance of all the jurors on the pannel. Chalmers and al. vs. Stow, iii. n. s. 307

3. An intervening party may pray for a jury. Lacroix vs. Monard and al. iii. n. s. 339.

4. An application for a jury is too late, when judgment is about to be pronunced for want of an answer. Butler vs. Kenner and al. iii. n. s. 388.

5. When the evidence is equal, a jury ought to decide against the party holding the affirmative of the issue. Bowman vs. Flower, iii. n. s. 641. Knox vs. Haslett, Curator, &c. xii. 255.

6. A jury of merchants will not be allowed to try whether a conveyance be fraudulent or not. Emerson vs. M'Cullough's Syndics, ii. 298.

7. Parts of the facts of a case may be submitted to a jury. Morris vs. Hatch, ii. n. s. 491.

8. Objections to the legality of a venire are too late after a verdict is recorded. Vidal vs. Thompson, xi. 23.

9. The finding of a jury must be understood with reference to the pleadings. Trepagnier's Heirs vs. Durnford, v. 451.

10. The jury are proper judges of the credibility of witnesses. Morgan vs. Bickle and al. ii. n. s. 377.

11. A jury cannot find a verdict in the disjunctive-e. g.

that an instrument was obtained through error or fraud.*
Wall vs. Hampton and al. iv. n. s. 310.

Vide Array. Supreme Court. Fraud, 15. Issue. Special Facts. Juron.

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JUSTICE OF THE PEACE.

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1. A justice of the peace is not answerable civiliter. Dressen vs. Cox, ii. n. s. 631.

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- 1. A squatter on public land has no right to object to the passage of a road over the land he occupies. Allard and al. vs. Lobau, iii. n. s. 293.
- 2. Possession cannot be pleaded against the public, except it be had from time immemorial. *Ibid. Ibid.*
- 3. A sale of land carries with it all stipulations with regard to the property conveyed. Stafford vs. Grimball, i. n. s. 554.
- 4. When a claimant does not shew his right to any determinate spot, it cannot be enforced. Bernard vs. Shaw, i. n. s. 480.
 - 5. A purchaser of a tract of 1400 arpents cannot refuse

^{*} The act of 1807, authorizing a special jury in certain cases, is repealed, by an act of the 27th March, 1823. The right of calling one by consent of both parties, however, is preserved.

payment on the ground that the title has been confirmed by the United States for 640 only. Guidry vs. Green, i. n. s. 475.

6. If no particular limits be given, the land must be surveyed so as to interfere as little as possible with the rights of others. Holstein vs. Henderson, xii. 319.

7. When lands are called for on each side of a stream, without specifying how much on each side, the survey is to be made so as to give an equal quantity on each. *Ibid. Ib.*

8. When a certain quantity of superficial arpents are granted on part of a stream where from the manner in which the surrounding titles are surveyed, the quantity given cannot be obtained without making the stream the side line of survey, it may be done. *Ibid. Ibid.*

9. A right supported by a requete, specifying a definite quantity of land, is of a higher dignity than that resulting from mere possession, which can give a right only to the extent actually enclosed. Martin vs. Turnbull, xii. 395.

10. A certificate of land commissioners does not prevail against the claims of individuals. Sanchez and Wife vs. Gonzales, xi. 207.

11. A party from whom land is recovered, ought to be charged for the use and occupation from the day of legal demand. Walsh vs. Collins, xi. 588.

12. A plot and survey, not returned to the proper office, does not bind third persons. Baldwin vs. Stafford and al. x. 416.

13. If a tract of two hundred arpents be sold, to begin on a bayou, and run down and back for the quantity, the grantee must have such a front on the bayou as with the depth of the tract will make two hundred arpents. Williams vs. Hall, ix. 80.

14. When the owner of land keeps the works thereon, erected by another, he must pay their value. Labric vs. Filiol, ix. 348.

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15. When two claimants of the same tract of land have both obtained certificates from the commissioners, their respective titles must be examined without regard thereto. Hooter vs. Tippet, viii. 637. King and al. vs. Martin, v. 197.

16. A requete on which no order was made, gives no right. Hooter vs. Tippet, viii. 637.

17. If a plff's deed call for all the land between A. and D. he is entitled to the land from the point at which A's grant terminates. Archinard vs. Miller, viii. 713.

18. A process verbal of a sale of land, not subscribed by, nor shewn to be in the hand-writing of the officer selling, cannot support a writ of seizure. Day vs. Fristoe and al. vii. 239.

19. If a tract of land of one hundred acres on the side of a lake be sold out of a larger one, and the vendee locate himself on the whole front of the large tract on the lake, which is less than ten acres, running two perpendicular lines to include one hundred acres, if he do not take more than a fair proportion of the good and bad land, and improves the ground, he will not afterwards be removed on the allegation that he ought to have taken the land in a square form. Curtis vs. Muse and al. vii. 234.

20. Whether an order of survey entitle a party to a petitory action against a possessor without title? King and al. vs. Martin, v. 197.

21. A verbal promise to pay a vendor the difference between the price of land, and that at which it may be sold, will not support an action. Hart vs. Clark's Ex'rs, v. 614. Clark's Ex'rs and al. vs. Farrar, iii. 252.

- 22. A confirmation by the United States cannot prevail adainst a complete Spanish title. White vs. Wells' Ex'r., v. 652.
- 23. A dest. cannot be disturbed, when a plst. does not shew a better title. Martin's Heirs vs. Gardiner and al. v. 662.
- 24. On a verbal sale of land, either of the parties may recant before the conveyance be executed. Casson and Wife vs. Fulton's Ex'rs, v. 676. Villere and al. vs. Brognier, iii. 326.
- 25. The Spanish government could grant land anew, when a grantee neglected to perform the condition of the grant. Bossier and al. vs. Metayer, v. 678.
- 26. A person who holds land by purchase from the Indians by private sale, approved by the governor of the province, cannot be disturbed by one who does not claim under them. Martin vs. Johnson and al. v. 655.

Vide Sale. Acquests and Gains, 2. Alien. Auctioneer, 2. Boundary. Constable. Contract, 20. Domicil, 5. Entry. Evidence, 89. Execution, 10. Experts. Grant. Indian. New-Orleans, 7. Patents. Practice, 1. Prescription, 26, 29, 32, 40. Privilege, 12. Riparious Estate. Title. United States.

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LANDLORD,

1. On an authentic lease, a landlord may obtain an order for seizure and sale in limine litis. Sterrett vs. Smith, ii. n. s. 450.

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2. On a lease for years, if the tenant quit the premises, the landlord may demand the rent for the whole term-Christy vs. Casanave, ii. n. s. 451.

3. A landlord has a privilege on the goods in the store, and furniture in the house, for the payment of his rent. Hanna vs. His Creditors, xii. 32.

4. But he must exercise it within a fortnight after their removal. Ibid. Ibid. Ritchie and al. Syndics vs. White and al. xi. 242.

5. The exercise of this right on the goods of a third person, is clearly a proceeding in rem. Ritchic and al. Syndics vs. White and al. xi. 242.

6. The syndics of a lessor do not represent the landlord. Ibid. Ibid.

Vide Bonds, 28. Lesson and Lessen. Lease. Privilege, 4, 7. Rent.

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1. When the law of the place where a contract is made is not exhibited in such a manner as to form the basis of an opinion, the supreme court will take for its rule of decision that of the state. Campbell vs. Miller, iii. n. s. 149. Campbell vs. Henderson. Ibid. 152.

2. Laws are not presumed to have a retrospective effect. Fournier vs. Landreau, iii. n. s. 173.

3. Laws which deprive men of their property without their consent, should be strictly pursued. Dufour vs. Camfranc, xi. 607.

- 4. Subsequent laws do not operate a repeal by containing provisions different from former ones: they must be contrary to them. Herman vs. Sprigg, iii. n. s. 190. Miller and al. vs. Mercier and al. Ibid. 236.
- 5. The laws of this state, which were in force previous to the adoption of the civil code, are not repealed thereby. Cottin vs. Cottin, v. 93.
- * Vide Acts of Assembly. Agreement, 6. Supreme Court, 2, 3. Distribution. Donation, 4. Foreign Law. Judiciary. Spaniard. Statutes. Civil Code.

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LEASE.

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- 1. A lease at will is determined by a tender of the keys after the legal notice. Chalmers and al. vs. Vignaud, Syndiciii. n. s. 189.
- 2. A verbal lease will prevail over a written one of a subsequent date, made to another person. Rachel vs. Pearsall, viii. 702.
- 3. A vendee is bound by a vendor's lease. Clague vs. Townsend and al. i. n. s. 264.

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Concrete vs. Londrecas III. a. s. 173

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Vide LEGATEE.

LEGATEE.

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1. A legatee cannot be compelled to suffer a deduction from his legacy to pay a debt not established contradictorily with the heir or representative of the estate. White vs. Hepp and al., vi. 704.

2. Accretion takes place between legatees in case of the legacy being made to several conjointly. Parkinson and al. vs. M'Donough and al. iv. n. s. 246.

3. Though the testator should by a subsequent member of the sentence, in which such bequest is made, assign a part to each legatee. *Ibid. Ibid.*

4. If a specific legacy of a note be made, and afterwards, (but before the death of the testator) a payment be made on it, the legatee cannot claim the original amount of the note. Hopp and al. vs. Lafonta's Ex'rs, iv. n. s. 428.

Vide EXECUTOR, 5. WILL.

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LESSOR AND LESSEE.

- 1. A lessee may be expelled, if he do not pay the rent.

 Dressen vs. Cox, ii. n. s. 631.
- 2. He may be held to bail, although his furniture be seized. Ibid. Ibid.
- 3. A lessee who has transferred his whole interest in a lease, cannot exercise the rights of a sub-lessor. Norton vs. Ormsby, i. n. s. 375.
 - 4. If a lessee, during his lease, divide the house, and un-

derlet one half of it, and after the termination of the lease the lessor receive one half of the rent from each party, he cannot afterwards charge the original lessee for the whole. Waters vs. Banks, x. 94.

5. In an action against a lessee, the cause will not be terminated by his calling the lessor in warranty. Kling vs. Fish, iv. n. s. 391.

Vide CONTRACT, 20. DOMICIL, 1. LANDLORD. RENT. the tripley being made to adverse conjourity

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1. The receiver of a letter has no right to publish it in spite of the writer. Denis vs. Leclerc, i. 297.

LEVEES.

- 1. Levees must be repaired according to the regulations of the police jury; but those regulations have no force until they are promulgated, Bouligny vs. Dormenon and al. ii. n. s. 455.
- 2. Individuals required to work on the levee of a delinquent planter, are to be paid out of the parish treasury: and have no action against the delinquent. Fortier vs. M'Donogh, iv. 718. A lo sange but compared below sered

Vide RIPARIOUS ESTATE ar his longing during ballyang divide the many and mar and the improved your transportation in many recommendation of

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Vide EVIDENCE, 161. SECURITY FOR GOOD BEHAVIOUR. grait their execution be ordered by a course SLANDER.

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1. Licitation is a mode of dividing estates held in common, and may be avoided, like any other contract, by the parties thereto. Hayes vs. Cuny, ix. 87.

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LIEN.

- 1. When a lien results from an act done, and not from a contract, the want of registry cannot be urged. Miller und al. vs. Mercier and al. in. n. s. 229.
- 2. An agent has a lien on goods placed in his hands for sale, and it will not be lost by depositing them in the hands of a third person. Ganseford vs. Dutillet and al. i. n.
- 3. A judgment, not registered, gives no lien. Hanna vs. His Creditors, xii. 32.
- 4. A creditor acquires no lien by issuing a fi. fa. if he countermand its execution. Ibid. Ibid.
 - 5. Nor if he neglect to take out an alias. Ibid. Ibid.

- 6. A judgment gives no lien on its being docketted; but it does on being registered by the recorder of mortgages. *Ibid. Ibid.*
- 7. Judgments rendered in other states give no lien here, until their execution be ordered by a court of this state. M'Kenzie vs. Havard, xii. 102.
- 8. On the failure of a debtor, his creditors cannot resort to property on which they have a lien, in the hands of third persons, till they have discussed the proceeds of the property which was sold by his syndics. Crum and al. vs. Landlaw and al. Syndics, x. 468. Chiapella vs. Lanusse's Syndics, Ibid. 448.
- 9. A factor has a lien on the property of his principal in his hands. Canfield and al. vs. M'Laughlin, ix. 303.
- 10. A factor may obtain the property subject to his lien, although he demand it in his petition as his own. Ib. 317.
- 11. If a sale be made in a country where the vendee has no lien on the thing sold, he acquires none on its being brought here. Whiston and al. vs. Stodder and al. Syndics, viii. 95.
- 12. A lieu on real estate, in the hands of a third party, cannot be exercised without a judgment against the original debtor. Mouchon vs. Delor, v. 395.
- 13. A builder does not lose his tacit lien by his neglect to record his contract. Lafon vs. Saddler, iv. 476.
- 14. A vendor, who sells for a note, retains his lien in case of bankruptcy; but loses it if the goods sold be altered, as wine by mixture. Stackhouse and al. vs. Foley's Syndies, i, 228.
- 15. Provisions furnished for a vessel create a lien, which is not destroyed by her sailing. Bourcier and Lanusse vs. Sch'r Ann, i. 165.

Vide Bonds, 28. Banks, 8. Bills of Exchange and Promissory Notes, 18. Creditors, 4. Execution, 8. Factor, 5, 6. Garnishee, 7. Sequestration. United States. Contract.

LIMITATION—STATUTES OF.

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Dready stated v. 271

preterie a, ibin.

1. A statute of limitation vests the property, when it prevents the former owner from recovering the thing in consequence of a continued adverse possession. It is like the usucapio of the Roman laws. Broh vs. Jenkins, ix. 526.

LOUISIANA—STATE OF.

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1. The state of Louisiana is on an equal footing with the original states, and is not bound by any condition imposed subsequently to her admission. State vs. New-Orleans Nav. Co. xi. 309.

When there is no contract of marriage, the child et a

Vide ROAD.

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Tent a 17 of LOUISIANA STATE BANK.

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1. A party sued by the Louisiana State Bank cannot take the exception that its directors have not taken the

onth prescribed by law. Louisiana State Bank vs. Flood, iii. n. s. 341.

Vide Acrs of Assembly, 4.

MANDAMUS.

- 1. The writ of mandamus will not be granted to correct more errors of form. Lafon vs. Testamentary Ex'rs of Lafon, ii. n. s. 573
- 2. The supreme court cannot issue a mandamus to restore the clerk of a district court to his office. State vs. Dunlap and al. v. 271.
- 3. A mandamus is not a writ of right; and the supreme court will not grant it, when no useful purpose can be attained thereby. Corporation vs. Paulding, iv, n. s. 189.

Vide BILL OF EXCEPTIONS, 5.

MARRIAGE.

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- 1. When there is no contract of marriage, the child of a slave, belonging to a wife, is paraphernal. Frederic vs. Frederic, x. 188.
- 2. Under the Spanish law, as well as under the civil code, the community of goods is a consequence of a marriage, without having been stipulated for. Bruneau vs. Bruneau's Heirs, ix. 217.
 - 3. Although a marriage be celebrated abroad, the rights

of the parties will be regulated according to the law of the place of their domicil. Le Breton vs. Nouchet, iii. 60. Vide MARRIAGE CONTRACT.

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MARRIAGE CONTRACT.

- 1. It was not every valuation in a marriage contract, which transferred the wife's real estate to the husband, under the Spanish law. Prudhomme vs. Dawson and al. iii. n. s. 161.
- 2. Before the adoption of the civil code, estimation in a marriage contract, operated as a sale. Frere and al. vs. Frere and al. i. n. s. 462.
- 3. A contract of marriage entered into here, cannot provide that the rights of the parties shall be according to the custom of Paris. Bourcier vs. Lanusse iii. 581.

Vide Husband and Wife. Acquests and Gains, 1. Contract, 15. Downy. Marriage. Community of Goods.

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1. A widow is entitled to the marital portion, although she was married and resided in another state, where her husband died. Abercrombie vs. Caffray and al. iii. n. s. 1.

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MARSHAL OF THE UNITED STATES.

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1. The marshal of the United States is suable in a state court for a trespass. Johnston's Ex'r vs. Wall and al. i. n. s. 541. Dunn and Wife vs. Vail, vii. 416.

2. On a suit against the sureties to a marshal's bond, for fees collected by him, it is no defence to urge that the plff's claim against the United States remains unimpaired. Dick vs. Reynold's Heirs and al. iv. n. s. 525.

Vide Bonds, 10, 11.

MARTIAL LAW.

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1. What, it is. Johnson vs. Duncan and al's Syndics, iii. 530.

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MAYOR OF NEW-ORLEANS.

1. The mayor of New-Orleans may abandon a part of his salary. Girod vs. Mayor, &c. iv. 698.

2. He may sue, in conjunction with the aldermen and inhabitants, for the removal of a nuisance. Mayor, &c. vs. Magnon, iv. 2.

Vide HABEAS CORPUS, 3.

MINORS.

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- I. Impubers.
- II. Adults.

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- III. Their Estate—the Inventory and Sale thereof.
- IV. Confirmation of acts done for them.
 - V. Minors generally.

L IMPUBERS.

1. A minor, under the age of puberty, cannot appear in court by a curator ad litem. Heno and al. vs. Heno, ix. 643.

II. ADULTS.

- 2. A minor above the age of puberty, must be assisted by his curator. Gassiot vs. Gicquel, ii. n. s. 218.
- 3. If he be not thus assisted, this circumstance may on the appeal be assigned as an error apparent on the face of the record. *Ibid. Ibid.*
- 4. A minor above the age of puberty may contract, if the engagement be advantageous to him. Southworth and al. vs. Bowie, i. n. s. 537.

III. THEIR ESTATE—THE INVENTORY AND SALE THEREOF.

- 5. When the forms of law have been complied with in the alienation of a minor's estate, he is considered as having made it, as though he was of full age. Agaisse and al. vs. Guedron and al. ii. n. s. 80.
 - 6. The circumstance of a minor's estate being already

in the hands of a tutor, could not prevent the Legislature from directing it to be administered in a new way. Ib. 73.

7. No law requires that in the inventory of a minor's estate, the property coming from his father should be distinguished from that coming from his mother. *Ibid. Ibid.*

8. Nor will a court set aside a sale of his property, be-

cause this distinction was omitted. Ibid. Ibid.

9. If a sale of a minor's estate be sought to be set aside on account of lesion by a restitutio in integrum, the circumstance that some time after the sale, it was sold by the vendee for a greater price than he gave, will not authorize the restitution, particularly, if he gave the appraised value. Ibid. Boissier and al. vs. Vienne, Curator and al. xii. 421.

10. The property of a minor cannot be alienated in any other way than that prescribed by law. Gayoso De Lemos vs. Garcia, i. n. s. 324. Bynum vs. Lemoine, Ibid. 628.

11. The formalities which the law has prescribed for the sale of a minor's estate, are introduced for his exclusive advantage—the purchaser cannot successfully allege the want of them. *Melançon's Heirs* vs. *Duhamel*, x. 225.

12. The process verbal of the sale of a minor's land by the parish judge, is valid, though it be reduced to writing

in the French language. Ibid. Ibid.

13. The proceedings of a court of probates in a parish in which neither the minor, his tutor, or under tutor reside, for the sale of his property, are void. Leonard's Tutor vs. Mandeville, ix. 489. Cresse vs. Marigny, iv. 54.

14. The sale of a minor's property must take place at the spot where the family meeting has decided that it is most advantageous it should. In the Case of Julia Pierce, ix. 461.

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IV. CONFIRMATION OF ACTS DONE FOR THEM.

15. A child who has approved of the partition, since he became of age, cannot maintain an action on the ground that it was illegal. Westover and al. vs. Aime and Wife, xi. 443.

16. So also if he expressly or tacitly approve of an alienation of his property while he was a minor. Chesneau's Heirs vs. Sadler, x. 726.

V. MINORS GENERALLY.

17. A minor, not emancipated, can only bind himself by a contract that turns to his advantage. Guirot vs. Guirot's Syndics, iii. n. s. 400.

18. A minor may consider an illegal sale of his property as a conversion, and claim the price with interest. Chesneau vs. Girod, ii. n. s. 612.

19. In such a suit, the minor need not shew that he has been injured by the sale. Chesneau's Heiri vs. Sadler, x. 726.

20. If a person of age bring a suit for a minor without authority, he will be decreed to pay the costs. Gassiot vs. Gicquel, ii. n. s. 218.

21. A minor whose property has been sold without the necessary solemnities, has an action against his tutor for damages, and against a third possessor for the property. Leonard's Tutor vs. Mandeville, ix. 489.

22. He has a mortgage, but no privilege, on his tutor's estate. Welman vs. Welman and al's Syndics, v. 574.

23. The counter-letter of a minor is binding when it

makes part of the res gesta. Montamat and Wife vs. Deben, iv. n. s. 147.

Vide Collation. Contract, 28. Exchange—contract of, 2. Prescription, 10, 18, 30. Set-off and Compensation. Tutor. Curator. Family Meeting. Heir.

MORTGAGES.

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1. Special Mortgages.

II. Judicial Mortgages.

III. Tacit Mortgages.

IV. Recording of.

V. Pact de non alienando.

VI. Cancelling of.

VII. Release of.

VIII. Acts of Mortgage which amount to a confession of judgment.

IX. Executory proceedings on Mortgages.

X. Action of Mortgage.

XI. Sale of Mortgaged Property.

XII. Mortgages generally.

I. SPECIAL MORTGAGES.

1. A special mortgage attaches on property afterwards acquired, if the act mention it. Deshautel vs. Parkins, use of Campbell, Rich & Co. i. n. s. 547.

II. JUDICIAL MORTGAGES.

2. A judicial mortgage does not extend to lands out of the state. Williamson and al. vs. Their Creditors, v. 618.

III. TACIT MORTGAGES.

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3. A tacit mortgage cannot be enforced on property in the hands of a third person, without a judgment against the principal debtor. Ragant vs. Gremillon, i. n. s. 67.

4. The tacit mortgage on the natural futor's estate, begins with the tutorship. Montegut and al. vs. Trouart and al. vii. 361.

5. A husband's property, whether acquired before or during marriage, is tacitly bound to secure the payment of the rights of the wife, though alienated before the dissolution of the marriage. Casson vs. Blanque, iii. 390.

6. But when she contracts with him, the renunciation of her right on the subject of the contract, is implied.—

Brognier vs. Forstall, iii. 577.

IV. RECORDING OF.

7. It suffices that a mortgage be recorded before a cession, to make it binding on the creditors. Accinelli vs. Syndics of Menard, ii. n. s. 222.

8. A mortgage, recorded without a judge's order, operates as a notice to third persons. Morrison and al. vs. Trudeau, i. n. s. 384.

9. A stay of proceedings does not prevent the recording of a mortgage. Torry and al. Syndics vs. Shamburgh, x. 23.

10. A mortgage under private signature, may be recorded on the production of the original. Lefevre vs. Bonique's Syndies and al. v. 481.

V. PACT DE NON ALIENANDO.

11. A mortgagee's right under the pact de non alienando,

is not repealed by the civil code. Nathan and al. vs. Lec, ii. n. s. 32.

VI. CANCELLING OF.

- 12. The recorder is not bound to cancel a mortgage on the production of a note, to secure the payment of which it was given. Lemos vs. Duralde, iii. n. s. 258.
- 13. Although the register certifies that land is free from mortgage, if it appear that an order of court, by which a mortgage on it was cancelled, was obtained in the absence of the mortgagee, he will not be bound by it; and the purchaser of property thus situated, without notice, cannot be compelled to pay the price. Dreux, Ex'r vs. Ducournau, v. 625.

VII. RELEASE OF.

- 14. Before the act of 1817, syndics of insolvents could, in order to effect a sale of mortgaged property, release the mortgages thereon. Williamson and al. vs. Their Creditors, v. 618.
- 15. A promise to release a mortgage is no release. Balfour vs. Chew, iv. n. s. 154.

VIII. ACTS OF MORTGAGE WHICH AMOUNT TO A CONFESSION OF JUDGMENT.

16. An acknowledgment of the debt and mortgage, in a public act, amounts to a confession of judgment. Tilghman vs. Dias, xii. 691.

IX. EXECUTORY PROCEEDINGS ON MORTGAGES.

17. On the failure of a mortgagor, no judgment is ne-

cessary to pursue the premises in the hands of a third possessor. Miller and al. vs. Meroier and al. iii. n. s. 229. Rowel vs. Buhler and al. Ibid. 348. Bernard vs. Vignaud, i. n. s. 1.

18. The endorsee of a note, secured by a mortgage, may after payment have an order of seizure and sale; but he must prove the facts which entitled him to do so by evidence of as high a nature as the deed of mortgage. Nich l vs. De Ende, iii. n. s. 310.

19. An order of sale and seizure, obtained before a debtor's death, cannot be executed afterwards; but the creditor is entitled to costs up to the time of the debtor's decease. Jenkins vs. Tylor, iii. n. s. 182.

20. An application for an order of seizure and sale must be made to the judge of the parish or district of the debtor's domicil. Marigny vs. Hunt, iii. n. s. 651. Tilghman vs. Dias, xii. 691.

21. The plff. cannot proceed by an order of seizure and sale, and the via ordinaria at the same time: if he do so, the former will merge in the latter. Skipwith and al. vs. Gray, iii. n. s. 655.

22. When a deed of mortgage has the clause de non alienando, the premises may be sold at once in the hands of the vendee. Nathan and al. vs. Lee, ii. n. s. 33.

23. But this clause does not prevent a sale by the court of probates. De Ende vs. Moore, ii. n. s. 336.

24. An assignee by an act sous seing privé cannot obtain an order of seizure and sale at chambers. Gilly vs. Lee, i. n. s. 237.

25. A mortgagee cannot proceed against the premises in the hands of a third possessor until after judgment

against the mortgagor. Curtis vs. Murray, viii. 640. To-

1 26. In the case of tacit mortgages, an act of mortgage in not necessary to enable the creditor to obtain an order of seizure and sale. Bernard vs. Vignaud, i. n. s. 1.

X. ACTION OF MORTGAGE.

27. A third possessor must be sued by an action of mortgage. Richards vs. Nolan and al. iii. n. s. 336.

28. When mortgaged premises have passed into the hands of a third party, the creditor is driven to the action of mortgage. Layton vs. Syndies of Menard, ii. n. s. 505.

29. When a debtor, whose property is subject to a general or tacit mortgage, has successively sold several objects of real property or slaves, the creditor must bring his action against the last purchaser, and ascend in succession to the first. Jackson and al. vs. Williams, xii. 334.

XI. SALE OF MORTGAGED PROPERTY.

30. Property specially mortgaged cannot be sold at the suit of a third party, for less than the amount of the mortgage. De Armas vs. Morgan, iii. n. s. 604.

31. A mortgagee has a right to require that syndics should sell the mortgaged property for cash. Accinelli vs.

Syndics of Menard, ii, n. s. 222.

- 32. A mortgagee cannot prevent the sale of the premises by a creditor—he can only insist on being paid in preference to him. Alexander vs. Jacob and al. v. 632.
- 33. A bid at a sheriff's sale is for the absolute value of the property, and not over and above the amount for which the property may be encumbered. Balfour vs. Chew, iv. n. s. 154.

34. But such bid may be made for the entire value, with the obligation to pay the amount of the mortgage, or for the value above the mortgage, and subject to the prior incumbrance. *Ibid. Ibid.*

35. Selling land, subject to a mortgage, does not make

the purchaser personally liable. Ibid. Ibid.

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36. Unless property sold by a sheriff bring more than the amount of previous mortgages, there will be no sale. *Ibid. Ibid.*

XII. MORTGAGES GENERALLY.

37. A mortgage does not prevent the mortgagor from selling his right, although it may enable the mortgagee to disturb the vendee. Wyer vs. Winchester, ii. n. s. 69.

38. A person, who to secure the payment of a debt, takes a bill of sale of slaves instead of a mortgage, cannot take possession of them by his own act. Baron vs. Phelan, iv. 88.

39. If a mortgagee receive a negociable note for his debt, he cannot resort to his lien, without shewing that he still holds the note unpaid. Cox, Surviving, &c. vs. Rabaud's Syndics, iv. 11.

40. If a debt secured by a mortgage, be intermingled in an account with simple debts of a greater amount, and a small balance remain due on the whole, so that it does not appear whether it be part of the mortgage or simple contract debts, the mortgage will not avail. *Ibid. Ibid.*

41. If an insolvent mortgage his estate for a prior debt, and for money borrowed at the time, the mortgage will be valid for the money thus received. Brown vs. Kenner and al. iii. 270.

42. A mortgagee buying premises under a f. fa. may re-

tain part of his debt, becoming afterwards payable. Fowler's Syndics vs. Dupassau, iii. 574.

- 43. In a public sale to satisfy a mortgage, the mortgagee, if he purchase, will be allowed to retain the price. Bacon vs. M. Nutt and al. iii. n. s. 129.
- 44. A vendee ought to be permitted to shew that the premises were mortgaged, and suit brought on the morgage. Bushnell vs. Brown's Heirs, iii. n. s. 449.
- 45. If the vendor covenant to clear the estate of a mortgage, he will not be permitted to recover the price, till he satisfy the vendee that the mortgage is raised; and interest will not be allowed him, except from that time. Bouthemy's Ex'r vs. Ducournau, vi. 657.
- 46. The purchaser under a fi. fa. cannot recover back the money paid on the ground that the property sold was mortgaged. Lewis vs. Fram, iv. 397.
- 47. A mortgage, executed by two members of a firm, after the acting ones had obtained a respite, is of no avail. Ward vs. Brandt and al. Syndies, xi. 331.
- 48. An insolvent cannot mortgage his estate. Brown vs. Kenner and al. iii. 270.
- 49. A mortgage cannot be enforced on property, which previous to the date of recording it, had been sold by act sous seing privé, and delivered. Martinez vs. Layton and al. iv. n. s. 369.
- 50. A mortgagee creditor does not lose his rank, because the register overlooked his mortgage. Dreux vs. His Creditors, iv. n. s. 629.
- 51. If the wife of a mortgagor renounce her right, she will be postponed to the mortgagee. Ibid. Ibid.

Vide Absentee, 3. Attachment, 6. Attorneys, 36. Bills

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OF EXCHANGE AND PROMISSORY NOTES, 29. CREDITORS, 9, EXECUTION, 8, 18. FRAUD, 13. LIEN. MINORS. WRITTEN CONTRACT, PRIVILEGE.

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MURDER.

- 1. The crime of stabbing, with intent to murder, intends murder in the first degree. Territory vs. Mather, ii. 48.
- 2. Shooting at a person, with an intent to murder, is not a capital offence. State vs. Dupuy, ii. 177.

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NATURAL CHILD.

1. Natural children can receive but one-half of the estate, when the father leaves brothers or sisters.* Sennet vs. Sennet's Legatees, iii. 411.

Vide FATHER. ALIMONY.

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NAVIGATION LAWS OF THE UNITED STATES.

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- 1. A British vessel sailing from Margarita to Jamaica, the captain landing there bringing out passengers, and
- * By the new Civil Code, art. 913, it is provided that natural children duly acknowledged by the father, inherit to the exclusion of the state alone. Those of the mother by art. 912, inherit to the exclusion of all ascendants and collateral relations, as well as of the state.

coming to an American port, is forfeited under the navigation laws, although she did not enter any port in Jamaica, but stood off and on whilst the captain was on shore. United States vs. Francis and Eliza, vii. 713.

NEW-ORLEANS.

- 1. The city of New-Orleans derives no title from congress to land not part of the commons. Mayor, &c. of N. Orleans vs. Casteres, iii. 673.
- 2. Land near the city of New-Orleans, granted as part of the royal demesne and commons, on breach of the condition, is to be considered as part of the commons. Mayor, &c. of N. O. vs. Bermudez, iii. 307.
- 3. The tax of the city council on the raising of the portcullis of the bayou-bridge is illegal. Rabassa and al. vs. Mayor, &c. of N. O. iii, 218.
- 4. Whether the corporation of the city of New-Orleans, may demand a toll on the boats passing the bayou-bridge? Blanc and al. vs. Mayor, &c. of N. O. i. 120.
- 5. Whether the waters of the city of New-Orleans, may be drained in the canal carondelet? N. Orleans Navigation Co. vs. Mayor, &c. of N. O. i. 269.
- 6. Whether the corporation of the city of New-Orleans, may cumulate certain licenses? Ramozay and al. vs. Mayor, &c. of N. O. i. 241.
- 7. Gayoso's line near New-Orleans, recognised. Segur vs. Syndies of St. Maxent, i. 231.

^{*} This case was tried in the United States District Court, before judge Hall, and inserted in this volume by request of the members of the bar.

8. The corporation of the city of New-Orleans, may remove houses built in the streets. Daublin vs. Mayor, &c. of N. O. i. 185.

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Vide Boundary, 2. Canal Carondelet. Ferry. Mayor of New-Orleans. Nuisance.

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- 1. If in deciding on conflicting evidence, a jury compromise between the parties, a new trial will be ordered.—
 Bowman vs. Flower, iii. n. s. 641.
- 2. A new trial will be denied to a party who did not use due diligence to procure the necessary evidence. Stafford vs. Caltham, iii. n. s. 124. Hernandez and al. vs. Garetage, iv. n. s. 419.
- 3. A new trial cannot be granted, because it does not appear "upon what the jury based their verdict." Harrod and al. vs. Lafarge, xii. 21.
- 4. A new trial will not be granted on the late discovery of evidence to be obtained from the adverse party. Muirhead vs., M'Micken, x. 83.
- 5. Whether a party who has not pleaded a release, can have a new trial on his affidavit, that he has since the trial discovered the means of proving it? Smith vs. Crawford, x. 81.
- 6. In cases of tort, a new trial will not be granted to the plff, unless a strong case of injustice be made out. Sere vs. Armitage and al. ix. 398.
- 7. A new trial will not be granted to afford an opportunity to shew that a witness, sworn without objection, perjured himself. Saulet vs. Loiseau, vi. 511.

- 8. Seven judicial days allowed for a motion for a new trial. M'Farlane vs. Renaud, i. 220.
- 9. The evidence lately discovered must be stated, and the witness named in the affidavit for a new trial. Andre vs. Bienvenue, i. 148.
- 10. Applications for new trials, must be made to the legal discretion of the court below. Randall vs. Bayon, iv. n. s. 132.
- 11. A a new trial may be moved for three days after judgment is pronounced, though the cause has been tried by a jury.* Bedford and al. vs. Jacobs, iv. n. s. 528.

Vide APPELLANT AND APPELLEE, 12. ATTORNEYS, 3. Su-PREME COURT, 7. PRACTICE, 162, 163.

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NONSUIT.

- 1. When a plff. does not make out his case, he ought to be nonsuited. Harper vs. Destrehan, xii. 31. Sassman vs. Aime and Wife, ix. 267. Abat vs. Rion, vii. 562. Henry and al. vs. Russell, iii. n. s. 59. Congregation of St. Francis vs. Lauve, Ibid. 62. Johnson and al. vs. Incrarity, iv. n. s. 10.
- 2. There cannot be a nonsuit after a general verdict. Chedoteau's Heirs vs. Dominguez, vii. 490.
- 3. The court may in its discretion, after a special verdict, when the plff's claim is not established, give judgment as in case of nonsuit. Abat vs. Rion, vii. 567.
- 4. The nonsuit of an appellee, who was plff. below, did not revive his judgment under the territorial government. Seville vs. Chretien, v. 275.

^{*} See Code of Practice, articles 541, 546, 558.

5. A nonsuit places the parties in the same situation, as though it had not been instituted. Gardere vs. Foucher and al. iv. n. s. 352.

Vide BILLS OF EXCHANGE AND PROMISSORY NOTES, 112. SUPREME COURT. JUDGMENT, 1.

NOTARY.

1. If a party be unable by a bodily infirmity to subscribe an act, the notary ought to state it. Hodge's Heirs vs. Durnford, i. n. s. 123.

Vide Acts, 1. NOTARIAL ACTS. SALE.

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NOTARIAL ACTS.

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- 1. A Spanish notarial instrument, attested by three notaries of the district and the constitutional alcade, accompanied by a certificate of the American consul, may be received in evidence on proof of the notary's signature. Ferrers vs. Bosel, x. 35.
- 2. A notarial act is not complete until it be signed by all the parties. Miltenberger vs. Canon, x. 87. Villere and al. vs. Brognier, iii. 326.
- 3. A notarial act may be impeached by the subscribing witnesses, if they all agree, and the notary be of a bad character. Langlish vs. Schons and al. v. 405. Marie vs. Avar's Heirs, x. 25.

4. If they disagree, the execution of the act may be disproved by an alibi. Langlish vs. Schons and al. v. 406.

Vide Acts. Notary. Sale. Exceptions.

NOTICE.

1. Notice of a judgment cannot be given till after it is signed. Turpin vs. His Creditors, ix. 517.

2. The holder of an order not negotiable, is not bound to give notice to the drawer so strictly as in case of a bill of exchange. Soubercase and Wife vs. Caulwell, viii. 714.

3. In proceedings against bail on motion, notice thereof given by the attorney of the plff. is good. Hall vs. Farrow's Bail, ix. 391.

4. Notice to creditors to oppose the homologation of a tableau, may be given by publications. Ludeling's Syndies vs. Poydras' Ex'rs, iv. n. s. 637.

5. But to bring them into court in the first instance, personal notice is necessary as to those who reside in the parish. *Ibid. Ibid.*

6. Notice through the papers, or by bills stuck up, may either be resorted to in the city of New-Orleans. Ibid. Ibid.

Vide Assignment, 5, 11. Attachment, 29. Attorners, 36. Deposition. Practice, 166.

NOVATION.

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1. Novation is not presumed—it must be expressed or

clearly established. Crain vs. Robert, iii. n. s. 145. Mark vs. Bowers, iv. n. s. 95.

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2. If a creditor receive the note of a third party in payment of his debt, and it be so specified in his receipt, this will create a novation of the debt. Barrow and al. vs. How, ii. n. s. 144.

3. The promissory note of a debtor does not operate a novation of the debt. Turpin vs. His Creditors, ix. 562. Hobson and al. vs. Davidson's Syndics, viii. 422. Cox vs. Rabaud's Syndics, iv. 11.

4. A note received for a precedent debt operates as a novation, if due diligence be not used to collect it, and notify the endorser of its dishonour. *Marburg* vs. *Canfield*, iv. n. s. 539.

Vide BILLS OF EXCHANGE AND PROMISSORY NOTES, 19. DELEGATION.

NUISANCE.

THE 21st HE STREET STREET

- 1. A suit for the removal of a nuisance lies in the district court, although the corporation has power to remove it. Trustees of Natchitoches vs. Coe, iii. n. s. 140.
- 2. An inhabitant has the right to forbid the erection of houses or other edifices on public places. Mayor and al. of N. O. vs. Gravier, xi. 620.
- 3. And in a suit, already commenced by the corporation, he may intervene, and urge his private right to strengthen that of the public. *Ibid. Ibid.*

Vide New-Orleans, 8.

NULLITY.

1. The absence of the reasons on which a judgment is grounded, is only a relative nullity. Whitehurst vs. Hickey and al. iii. n. s. 589.

2. Whether the recourse of nullity against a judgment, as exercised under the Spanish law, still exists in Louisiana? Williamson and al. vs. Their Creditors, v. 618. Meeker's Assignees vs. Williamson and al. Syndics, iv. 625.

3. Under a general allegation of nullity, nothing which does not appear on the record can avail. Williamson and al. vs. Their Creditors, v. 618.

Vide SALE.

OATH.

1. The decisory oath cannot be tendered in this territory. Porche's Heirs vs. Poydras, i. 198.

2. An affidavit made before a notary in another state, is not sufficiently authenticated by his official signature and seal. Hicks vs. Duncan and al. iv. n. s. 314.

Vide LOUISIANA STATE BANK.

OBLIGATION.

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Vide CONTRACT.

OBLIGATIONS IMPOSED BY LAW.

1. A person on whom the law imposes a duty, cannot excuse his neglect to perform it on the ground that he was not asked to do so. Hernandez and al. vs. Montgomery, ii. n. s. 422.

OFFICE

(to ACTIVATE) M. AVA

1. He who enters on the duties of an office without proper authority, subjects himself to all the responsibilities attached to it, but cannot claim any of its benefits. Abat vs. Bayon, iv. n. s. 516.

Vide RESPONSIBILITY.

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- 1. An order for cotton, given in payment of a debt, must be presented in a reasonable time, or it will be at the creditor's risk. Turner vs. Rabb, iv. 330.
- 2. The payee of an order cannot recover from the drawer without shewing a demand and notice of non-payment. Henderson vs. Griffin, iii. n. s. 403.

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Vide ATTACHMENT, 35.

ORDER OF COURT.

1. A plff is not bound by an ex parte order of court, directing his money to be paid to a person not authorized to receive it. Delassize vs. Cenas, iv. n. s. 508.

ORLEANS NAVIGATION COMPANY.

1. The charter of the New-Orleans Navigation Company is not unconstitutional, nor affected by any act of congress. State vs. New-Orleans Navigation Co. xi. 309.

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OVERSEER.

- 1. If an overseer be discharged for misconduct, he can recover for the time he served only. *Grafton* vs. *Collins*, iii. n. s. 156.
- 2. If the dest, promise to deliver to the plaintiff, his overseer, a quantity of provisions for himself and family, he cannot withhold them till the end of the year. Seal vs. Erwin and al. ii. n. s. 245.
- 3. It is not a fatal objection to the petition in such a case, when the price of the provisions is claimed in money, that their value is not stated. *Ibid. Ibid.*
 - 4. If A. propose to B. to take charge of his plantation

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for a fixed allowance, B's going and taking charge of it, is evidence of his assent to the terms. Ibid. Ibid.

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PARAPHERNAL ESTATE.

- 1. All a wife's property, not constituted in dowry, is paraphernal; and she has a tacit mortgage on the husband's property, if he dispose of it. Hannie vs. Browder, vi. 14. O'Connor and al. vs. Barre, iii. 446. Degruy vs. St. P&s Creditors, iv. n. s. 404.
- 2. Otherwise, if the price received by him enure to the benefit of the wife. Degruy vs. St. Pe's Creditors, iv.n. s. 405. Vide Mortgages.

PARISH JUDGE.

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- 1. The attestation of a parish judge is legal, though he subscribe himself judge, and not parish judge. Expicios vs. Weiss, iii. n. s. 480.
- 2. A parish judge, as such, cannot receive and certify a vendor's acknowledgment. Seymour vs. Cooley, iii. n. s. 396.
- 3. He is not answerable for error of judgment. Bouligny vs. Dormenon and al. ii. n. s. 457.
- 4. A parish judge, charged with the settlement of an estate, cannot receive a reward for professional services rendered therein. Duverney vs. Vinot, xi. 722.
- 5. A parish judge may record his own bill of sale. Tessier vs. Hall, vii, 411.

6. He cannot act as counsel or attorney in a suit brought up by consent from his court. Hudson vs. Grieve, i. 143.

Vide Bills of Sale.

PARTITION.

- 1. A transaction may include partition, as partition includes alienation and sale. Goodwin vs. Heirs of Chesneau, iii. n. s. 409.
- 2. The same rules which govern partition, do not strictly apply to every act by which the joint ownership is destroyed. *Ibid. Ibid.*
- 3. It is a fiction of law, to prevent lesion, that all acts putting an end to joint ownership are to be considered as partitions. *Ibid. Ibid.*
- 4. A contract by which a step-father renounces all his right to his wife's estate, on receiving specific property, is not a partition. *Ibid. Ibid.*
- 5. If heirs, in dividing an estate, execute a reciprocal deed of sale, it will be considered as one of partition. Westover and al. vs. Aims and Wife, xi. 443.
- 6. The action of partition is prescribed by the lapse of thirty years. Gravier and al. vs. Livingston and al. vi. 281.

Vide LICITATION. PRESCRIPTION, 31. SALE.

PARTNERSHIP.

1. A firm may consist of the name of one partner only.

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Phillips vs. Paxton and al. iii. n. s. 39. Ward vs. Brandt and al. Syndies, xi. 424.

2. A partner endorsing a note due to the firm after the co-partner's death, transfers all his own interest therein. Jones and al. vs. Thorn, ii. n. s. 463.

3. In a joint speculation, the party who acts ought to take the necessary steps to secure payment, or give notice to the person interested with him of the danger of the loss, otherwise he will be liable to indemnify him. Barron and al. vs. Blanchard, ii. n. s. 662.

4. Expenses of a partner of a firm in the prison bounds, are to be borne by the firm. Day and al. vs. Morte, ii. n. s. 90.

5. An injunction, improperly sued out against a partner, authorizes a suit for damages by the firm. Mitchel and al. vs. Gervais, ii. n. s. 568.

6. A surviving partner, being a joint tenant, may resist alone a tortious sale of the joint estate of the partnership. Wyer vs. Winchester, ii. n. s. 69.

7. A partner may accept a title to real property for the firm, but cannot alienate it to their prejudice, without their consent. Richardson vs. Packwood, i. n. s. 290. Simmins f. m. c. vs. Parker, iv. n. s. 200.

8. But he may sell the right of warranty against the vendor from whom the firm purchased. Simmins f. m. c. vs. Parker, iv. n. 200.

9. Aliter, if the partnership be dissolved. Ibid. Ibid.

10. Although a firm has but two members, their interest is not necessarily equal. Allen vs. Brown and al. i. n. s. 344.

11. A court of probates has not jurisdiction of a demand against a surviving partner for a partnership debt. Turner vs. Collins, i. n. s. 369.

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12. If judgment be given against a partner in another state, and the plff. sue the other in this, he cannot recover but on terms. Bryans and al. vs. Dunseth, i. n. s. 412.

13. A partner who alleges losses, must prove them.—

Marquez vs. Visoso, i. n. s. 449.

14. The signature of one of the partners, binds the firm in affairs which are not privately his own. Arnold vs. Bureau, xi. 213.

15. A partnerthip to do commission business as factors, is not a particular one. Ward vs. Brandt and al. Syndics, xi. 331.

16. It is not necessary that the firm should contain the name of all the partners. Ibid. Ibid.

17. In an ordinary commercial partnership, the members are bound in solido. Ibid. Ibid.

18. Hence they cannot receive what may be individually due to them by the firm, till all the creditors are paid. *Ibid.*

19. Private debts cannot be set off against a partnership debt. *Ibid. Ibid. Thomas and al.* vs. *Elkins*, iv. 376. Smith vs. Dunean and Jackson, i. 25.

20. Debts not arising from a consignment, may in case of insolvency, be proven against a commission house. *Ibid. Ib.*

21. A partnership to carry on business as iron-mongers, is not a special or corporate one. Norris' Heirs vs. Ogden's Ex'rs, xi. 455.

22. In an ordinary partnership, dissolved by the death of one of its members, his heirs have a right to participate with the other partners in the liquidation. *Ibid. Ibid.*

23. If a suit be commenced by one of a firm for a partnership debt, the others may intervene. Ibid. Ibid.

24. It is otherwise with one having a joint interest with the deft. Ibid. Ibid.

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25. A partner has no action against his co-partner for any sum paid for the partnership, nor for any funds placed in it until a final settlement takes place, and then for the balance only which may appear to be due. Drumgoole vs. Gardner's Widow and Heirs, x. 433.

26. If a partner set up an adverse claim, a co-partner may have a writ of sequestration. Johnson and al. vs. Brandt and al. x. 638.

27. If in a commercial partnership it be provided that real estate may be purchased for the conveniency of carrying on trade, and one of the partners purchase upwards of 20,000 arpents, the purchase will not bind the other. Brooks' Syndics vs. Hamilton, x. 285.

28. The dissolution of a partnership does not prevent the partners from bringing suit. Terril and al. vs. Flower and al. vi. 583.

29. The creditor of a partner has no right to be placed on the bilan of the partnership, nor on that of his debtor's co-partner. Desse's vs. Plantin's Syndics, vi. 699.

30. A debtor of a firm, on its failure, cannot plead to the action of the syndics, payment and satisfaction by the individual partner with whom he contracted, to the other.—

Duncan and al. Syndics, vs. Bechtel, vi. 510.

31. In a particular partnership, the partners are not bound in solido. Slocum vs. Sibley, v. 682.

32. A partner, contracting for the partnership, cannot be admitted to say, that he did so without authority. Smith vs. Kemper, iv. 409.

33. The liability of partners on a contract made in this state is governed by our laws, although the partnership may have been entered into in another state. Baldwin vs. Gray, iv. n. s. 192.

- 34. Partners in a steam-boat, residing in this state, are bound in solido for necessaries furnished in a state in which the law creates such an obligation. Ferguson vs. Flower and al. iv. n. s. 312.
- 35. The partner of my partner, is not my partner. Hazard vs. Boyd, iv. n. s. 347.
- 36. He who holds himself out as the partner in a commercial firm, though he is in reality not a member, is responsible as such. Richardson vs. Debuys and al. iv. n. s. 127.

Vide AGREEMENT, 10. ATTACHMENT, 30, 31. BILLS OF EXCHANGE AND PROMISSORY NOTES, 81. CONTRACT, 19. EVIDENCE, 116. CORPORATION, 8. EXECUTOR, 14. JOINT OWNERSHIP. PARTITION. LICITATION. SET-OFF AND COMPENSATION. SHIP OWNERS. SUBROGATION.

PATENTS.

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1. A patent dated in 1813, is a superior title to a report of the commissioners in 1816, in favor of a settler. Seymour vs. Cooley, iii. n. s. 396.

PAYMENT.

- 1. A payment above \$500, may be proven by one witness. Pannell vs. Coe and al. i. n. s. 614.
- 2. Payment of a note to a person who has not at the time possession of it, nor any authority to receive its a-

mount, is not good, although he afterwards receive it, with authority to collect its amount. Welsh vs. Brown, x. 310.

3. Payment of property, part of a succession, to a person declared heir to it, by the judgment of a competent court unappealed from, is valid, even after the judgment is reversed. Phillips vs. Johnson and al. vii. 226.

4. Payment of personal property, part of a succession, to a person recognised as heir to the real estate, is invalid. Phillips vs. Carson, vii. 230.

5. If payment be made of a debt of a succession to a person declared heir to it, pending the appeal from the judgment which declared him such, and on the affirmance of the judgment a devolutive appeal is taken from the affirming judgment, the payment will be valid, notwithstanding the payee is declared not to be the heir. Phillips vs. Curtis, vii. 237.

6. A debt is extinguished by payment to the person, who at the time of such payment, had the right of demanding it. Phillips vs. Fulton's Heirs, vii. 241. Same vs. Carson, vii. 246. Same vs. Sackett, vii. 247.

7. A debt is extinguished by payment to a person decreed to be entitled thereto, twenty days after the time during which an appeal might have suspended the execution of the judgment decreeing him to be so entitled. *Phillips* vs. *Kilgour*, vii. 243.

8. When the application of a payment is not made by a debtor, it is to be imputed to the debt which he had the greatest interest in discharging. Wickner vs. Croghan, iv. n. s. 79.

9. Whether a payment to a partner acting in a separate capacity, be a payment to the firm?* Dennison and al. vs. Nicholson, iv. n. s. 308.

^{*} See the act of 17th Feb. 1821, relative to tenders of payment.

Vide Attorneys, 4, 21, 22. Bills of Exchange and Promissory Notes, 9, 10, 30, 31, 32, 33. Debtor and Creditor, 1. Evidence, 110. Extinguishment. Novation. Possession. Sale. Dation en Paiement. United States, Vendor and Vendee.

PENALTY.

- 1. The penalty cannot exceed double the amount of the injury. English vs. Latham, iii. n. s. 88.
- 2. It cannot be superadded to the damages. Church Wardens and al. vs. Peytavin, i. n. s. 400.
- 3. It is forfeited by the debtor's delay only, even in the case of the payment of money. *Ibid. Ibid.*
- 4. The whole penalty cannot be recovered on a partial breach. M'Nair vs. Thompson, v. 525.

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Vide FORFEITURE.

PETITION.*

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Vide PRACTICE. CLAIM. ARREST.

^{*} Petitions and citations must be in English and French, when the mother tongue of the defendant is French. See Code of Practice, article 172. Also acts of 1826, p. 168, sect. 3.

PILOTAGE.

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- 1. The master and wardens of New-Orleans have no exclusive right to collect a pilot's fees. Allen vs. Guenon and al. iii. 125.
- 2. The master of a packet, plying between New-Orleans and Pensacola, not drawing more than five feet water, is not bound to take a pilot when leaving Pensacola. Hennen vs. Munroe, xi. 579.

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PLANTER.

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1. A planter who receives advances from a merchant is not thereby bound to give him the sale of his crop. Harrod and al. vs. Constant, v. 575.

Vide Levers.

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PLEDGE.

- 1. A creditor may be compelled to sell a thing pledged. Williams and al. vs. Schr. St. Stephens, ii. n. s. 24.
- 2. There may be a pledge for a debt depending on a condition. Clay vs. His Creditors, ix. 523.
 - 3. Choses in action may be pledged. Ibid. 525.
 - 4. A pledge does not amount to an alienation. Ibid. 524.

5. Delivery is of the essence of the contract of pledge.

Lee and al. vs. Bradlee, viii. 20.

6 A contract of pledge must be authentic, or registered. Johnson vs. Duncan and al. Syndics, iii, 570.

POLICE JURY.

- 1. A police jury may sue for work done on the levee of a delinquent planter. Police Jury vs. M'Donogh, vii. 8.
 - 2. Its proceedings may be recorded in French. Ibid. Ibid.
- 3. When works are ordered specially by it, a visit of the parish judge is unnecessary. *Ibid. Ibid.*
- 4. It cannot be compelled by a court to comply with the directions of an act of the legislature, in laying a tax. Claiborne vs. Police Jury, vii. 4.

Vide APPEAL, 4. FERRY. LEVEES. PRACTICE, 54. WITNESS.

POSSESSION.

- 1. A possessor in good faith, who is evicted, does not lose his right to payment for improvements, by neglecting to pray for it in his answer. *Packwood* vs. *Richardson*, i. n. s. 405.
- 2. Whether the plff. in such a case can have execution until the improvements are paid for? *Ibid. Ibid.*
- 3. A possessor is not necessarily in bad faith from the time an action is instituted against him. Ibid. Ibid.

4. In an action against a third possessor, the creditor is not obliged to produce the evidence on which the judgment in his favor was decided. Bernaud vs. Vignaud, i. n.s. 1.

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5. A possessor in good faith does not owe fruits till after a judicial demand. Dufour vs. Camfranc, xi. 675.

6. A purchaser at a sheriff's sale by a defective title, owes fruits from the judicial demand. *Ibid. Ibid.*

7. Actual possession of a part with the titles for the whole, is possession of the whole. Donegan's Heirs vs. Martineau and al. ix. 43.

8. The possession of one who shews no title, when the extent of it is not shewn to have reached within a mile of the locus in quo, cannot be considered as a possession. Prevost's Heirs vs. Johnson and al. ix. 123.

9. Feeding cattle and hogs, cutting wood and erecting pens, are not necessarily acts of possession, as clearing land, cultivating it, building houses, &c. Ibid. Ibid.

10. When husband and wife hold property, to which one of them has a title, possession follows title. Clark's Heirs vs. Barham's Heirs, iv. n. s. 411.

Vide Action, 6. Entry. Execution, 10. Prescription, 19, 20, 21. Sale. Third Party. Title. Vendor and Vendee.

POWER.

1. Power vested by the words it shall be lawful, need not necessarily be exercised. Caulker vs. Banks, iii. n. s. 532.

Vide Bank Checks, 1.

POWER OF ATTORNEY.

1. A power of attorney executed before a justice of the peace in another state, is not a record or judicial proceeding under the act of congress. Parham vs. Murphey, iv. n. s. 355.

Vide ATTORNEYS, 8, 23, 26, 37.

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PRACTICE.

I. Parties to actions.

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II. Jurisdiction.

III. Petition.

IV. Abatement.

V. Dilatory Exceptions.

VI. Averment.

VII. Allegation and Proof.

VIII. Variance between Declaration and Proof.

IX. Affirmative of the Issue.

X. Oyer.

XI. Demurrer to Evidence.

XII. Answer.

XIII. General Issue.

XIV. Pleas in Bar.

XV. Pleas generally.

XVL Pleadings.

XVII. Replication.

XVIII. Claim in Reconvention.

XIX. Amendment.

XX. Defects and irregularities waived by after proceedings in a cause, and those which are not.

XXI. Contestatio litis.

XXII. Setting down causes for trial.

XXIII. Agreements made in a cause.

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XXVI. Prayer for a Jury.

XXVII. Trial by Jury.

XXVIII. Stating of facts to a Jury.

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XXX. Finding of a Jury.

XXXI. Misbehaviour of Counsel or Jury.

XXXII. Objections to a Verdict.

XXXIII. Causes consolidated.

XXXIV. Via ordinaria et executiva.

XXXV. Continuance.

XXXVI. Answer to Interrogatories.

XXXVII. Presumptions.

XXXVIII. Discontinuance.

XXXIX. Judgment.

XL. Causes Transferred.

· XLI. Removal of causes to the court of the U. States.

XLII. Rule to shew cause.

XLIII. Service of documents, papers, &c.

XLIV. Motions.

XLV. Proceedings against bail.

XLVI. Proceedings of an inferior court in cases remanded.

XLVII. Opinion of the Judge.

XLVIII. Time allowed counsel for absent debtors, &c.

I. PARTIES TO ACTIONS.

1. In suits in which there are several defts, they must all appear and answer in the parish in which the land in dispute lies, although neither of them resides there. Davenport's Heirs vs. Fortier and al. ii. n. s. 374.

2. Several creditors in the same predicament, and praying for the same relief, may join in one application. Pecquet and al. vs. Golis, i. n. s. 438.

3. If A. sue for B. the latter is the real plff. M'Nair vs. Thompson, v. 525.

4. The maker and endorser of a note may be sued jointly. Peretz vs. Peretz and al. i. 219.

5.- A plff. who sues as guardian, need not prove his capacity on the plea of a general issue. Harper vs. Destrehan, ii. n. s. 389.

6. A suit for a breach of contract made through an agent, should be brought against the principal, for whom the agent contracted. Honore vs. White and al. i. n. s. 219.

II. JURISDICTION.

7. A court may dismiss a cause at any stage, if it see that it has no jurisdiction. Lafon's Ex'rs vs. Lafon, i. n. s. 703.

III. PETITION.

8. Goods sold need not be described in the petition, when the deft. has assumed payment of their amount. Collins and al. vs. M'Crummen and al. iii. n. s. 166.

9. A plff. need not support his petition by his oath. Bingey vs. Cox, ii. n. s. 473.

10. The case of a justice of the peace, sued for misfeasance in office, forms no exception to this rule. Ibid. Ibid.

11. The same latitude is not allowed as at common law to a party who sets forth his claim in the several forms of declaration on common law counts. Stroud vs. Beardslee, ii. n. s. 84.

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12. When a petition charges that the bond sued on was taken according to law, and it be set forth, and made a part of it, the reading of it cannot be objected to on an allegation, that some of the formalities of the law were neglected. Duchamp and al. vs. Nicholson, ii. n. s. 672.

13. It is not sufficient that the facts necessary to be stated in a petition to create a responsibility in one character, establish a liability in another, to authorize a conclusion that the deft. was sued in both. John Brown & Co. vs. Richardsons, i. n. s. 202.

14. Neither the petition nor the citation need be in the French language.* Fleming vs. Conrad, xi. 301.

15. But copies must be served in both languages. Ibid.

16. There is no occasion of a case being set forth in various modes or counts to authorize the admission of proof, which supports it in substance. Gilly and al. vs. Henry, viii. 402.

17. If the petitioner charge that there is an error in a release, being a reference to a mortgage by a wrong date, it must be read, if proven, and the party left to establish the error by legal evidence. Hipkins vs. Salkeld, vii. 565.

19. Every circumstance which is proper to be known, in order to put the dest. on his desence to the suit, ought to be stated in the petition. Duncan and al. Syndics vs. Bechtel, vi. 510.

^{*} See note under Execution and Petition.

- 20. A claim for damages, on account of the deft's neglect in managing the plff's affairs must be specially laid in the petition, and cannot be established on an allegation that the deft is indebted on an account. Ralston vs. Barclay, vi. 649.
- 21. If a slave be claimed under a statute, which declares him forfeited, if he be removed without the consent of the reversioner, the petition must state that he was so removed. Hicks and Wife vs. Calvit, v. 691.
- 22. An instrument attached to the petition need not be in English. Clark's Ex'rs and al. vs. Farrar, iii 247.
- 23. Facts which must be proven, must be alleged in the petition, that the adverse party may have an opportunity to disprove them in the inferior court. Bouthemy vs. Dreux and al. xii. 639.
- 24. A plff may file a supplemental petition, which does not change the original action. Litchworth and al. vs. Bartells and al. iv. n. s. 136.

IV. ABATEMENT.

25. A mistake in a name by the omission of a letter, can only be taken advantage of by a plea in abatement. Boyer and Wife vs. Aubert and al. xii. 655.

V. DILATORY EXCEPTIONS.

- 26. Dilatory exceptions must be proven by the party making them, unless the affirmation upon which they rest involve a negative. Gayoso De Lemos vs. Garcia, i. n. s. 324. Powers vs. Foucher, xii. 73.
- 27. Declinatory and dilatory pleas should precede the answer on the merits. Brown and al. vs. Saul and al. iv. n. s. 434.

28. But the total want of a right disclosed by the petition, may be taken advantage of at any stage of the proceedings. *Ibid. Ibid.*

VI. AVERMENT.

29. An averment that an obligation has been discharged, dispenses with the proof of its execution. Naba vs. Carlin, iii. n. s. 373.

30. If the plea of the general issue be followed by an averment that the deft. has a better title than the plff. the averment does not control the plea. Murray vs. Boissier, x. 293.

31. If a plff. aver a faithful compliance with his part of a contract, and the answer allege generally a violation of it by the plff. the defendant may give a breach of it by the plff. in evidence. Bethemont vs. Davis, viii•391.

32. An allegation in a petition cannot be taken as true when the general issue is pleaded. Gravier vs. Brandt and al. i. n. s. 165.

VII. ALLEGATION AND PROOF.

- 33. When a right is asserted on one ground, and shewn on another, judgment will be given according to the justice of the case. Rodriguez vs. Morse, ii. n. s. 358. Langlish and Wife vs. Broussard, xii. 244. Flogny vs. Adams, xi. 547. Jackson vs. Larche, Ibid. 297. Bryan and Wife vs. Moore's Heirs. Ibid. 26. Canfield and al. vs. M'Laughlin, ix. 317.
- 34. A plff. may shew the value of goods sold, although he do not declare on a quantum valebant. Boyd and al. vs. Howard, iii. n. s. 286. Gilly and al. vs. Henry, viii. 402.
- 35. The allegata and probata must agree. White and al. vs. Noland, iii. n. s. 636. Strond vs. Beardslee, ii. n. s. 84.

- 36. If the plff. offer no proof of the damages alleged, judgment may be given generally for the deft. Guilbert vs. De Verbois, xii. 709.
- 37. So if the parties allege titles without averring a conflict, there may be judgment for the deft. Ibid. Ibid.
- 38. The plff is not bound to administer any proof of his allegations, which are not denied by the answer. Akin and al. vs. Bedf rd and al. iv. n. s. 615.
- 39. A plff. will fail, if the proof he adduces render the facts in his petition probable only. Thomas and al. vs. Woods and al. iv. n. s. 670.
- 40. Under a plea of error, evidence may be given that an account, which the maker of a note had against the payee, was omitted in the settlement on which such note was given. Orry vs. Winter, iv. n. s. 277.

VIII. VARIANCE BETWEEN DECLARATION AND PROOF.

- 41. When an instrument is not the gist of the action a small variance between that alleged and the one offered in evidence, is immaterial. Baldwin vs. Hazzleton, iii. n. s. 61.
- 42. A variance between the allegation and proof must be taken advantage of on the trial. Langlini and Wife vs. Broussard, xii. 242. Flogny vs. Adams, xi. 549.

IX. AFFIRMATIVE OF THE ISSUE.

43. When the point of fact is doubtful, judgment must, be given against the party holding the affirmative. Walton and al. vs. Grant and al. ii. n. s. 494. Knox vs. Haslett, Curator, &c. xii. 260.

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44. He who affirms must prove, unless the plea involve a negative. Powers vs. Foucher, xii. 70. Knox vs. Haslett, Curator, &c. Ibid. 255.

45. When the issue is on the life or death of a person, who once existed, the burthen of proof lies on the side on which the death is asserted. Gayoso De Lemos vs. Garcia, i. n. s. 324.

X. OYER.

46. The deft is entitled to over of the instrument sued on, even if he has not answered in ten days, if no judgment has been taken by default. Maxwell vs. Walker and al. ii. n. s. 211.

47. If the deft. on an appeal bond, sued in the court in which it was given, crave over, a copy being tendered to his counsel and refused, the bond being spread on the record will suffice. Dussuau vs. Rilieux, ix. 318.

XI. DEMURRER TO EVIDENCE.

48. The dest. cannot be permitted to demur to evidence, unless he admit every fact that the jury might infer from it. Skilliman vs. Jones, iii. n. s. 686.

49. A party may demur to the evidence. Durnford vs. Johnson, ii. 306.

XII. ANSWER.

50. The want of an answer does not warrant the confirmation of a judgment by default, without evidence, when the debt is not liquidated. Milne vs. Labo and al. ii. n. s. 83.

51. A deft. is not bound to answer under oath when not

required so to do; and if he do so voluntarily he cannot take advantage of it. Orleans Nav. Co. vs. Mayor, &c. of N. O. i. 23.

52. After an amendment of a petition, a new answer is to be put in before the pleadings are made up. Aston vs. Morgan, i. 205.

XIII. GENERAL ISSUE.

53. A failure in the plff. to comply with a condition precedent, may be taken advantage of under the general issue. Abert vs. Bayon, iii. n. s. 644.

54. On a rule to shew cause in favour of a police jury, for expenses on a levee, if the deft denied every thing charged, the judge cannot proceed to judgment without a trial. Syndics, &c. vs. Mayhew, iv. 175.

55. Under the general issue, the deft. cannot give a contract different from the one sued on in evidence, in avoidance. Center vs. Torry, viii. 206.

56. A denial that the plff. performed one part of his contract, is no admission that he performed the rest, if the general issue be pleaded. Cornell and Wife vs. Hope Ins. Co. iii. n. s. 223.

57. If the deft. plead the general issue, and that the plff. is his debtor, he cannot shew that the plff. agreed to receive his debt in Bordeaux, and made no demand there. Doubrere vs. Papin, iv. 184.

XIV. PLEAS IN BAR.

58. The deft. cannot plead in bar, that the plff. brought a suit for the same cause of action which he dismissed. Jackson vs. Larche, xi. 284.

59. Nor that other persons have sued him for the same trespass, and that the suits must be cumulated. *Ibid. Ibid.*

60. A judgment of discontinuance cannot be pleaded in bar. Petit vs. Gillet, v. 19.

61. A third party cannot intervene to plead peremptory exceptions on behalf of the deft. Clamageran vs. Bucks and al. iv. n. s. 487.

XV. PLEAS GENERALLY.

62. A plea of res judicata will be sustained, if it appear that the same thing was disallowed in a former suit. Voorhies, use of Cappel vs. Mulhollan, iii. n. s. 70.

63. Inconsistent pleas cannot be received.* Furguson

and al. vs. Thomas and al. iii. n. s. 75.

64. The pleas of usury, fraud, and want of consideration, do not waive the general issue. Durnford vs. Ayme, iii. n. s. 270.

65. A judgment in a sister state supports the plea of res judicata. Mackee and al. vs. Cairnes and al. ii. n. s. 599.

66. Contradictory pleas cannot be pleaded. Dean vs. Jackson, i. n. s. 127. Vavasseur vs. Bayon, xi. 639.

67. One who binds himself jointly and severally is a principal, and cannot avail himself of the pleas which the law gives to a surety alone. Etzberger vs. Menard, xi. 434.

68. Pleas which tend to prevent an examination of the merits, cannot be aided by inference. Clay vs. His Creditors, ix. 519.

69. If a plea be overruled, no trial can be had till answer filed. Broussart vs. Trahan and al. ii. 133.

70. Pleas of payment and want of consideration, are not inconsistent. Myles vs. Miller, iv. n. s. 492.

^{*} See 94, under this head.

71. An action cannot be defeated on the ground that there are others concerned, unless the plea disclose who they are. Honnen vs. Monro, iv. n. s. 450.

XVI. PLEADINGS.

- 72. Pleadings should not be argumentative, nor loaded with extraneous matter. Norris' Heirs vs. Ogden's Ex'rs, xi. 455.
- 73. Pleadings in this state consist only of the petition and answer. Pleas puis darrein continuance, are not known; but the party is protected from surprise, and in case of any new occurrence, allowed time. Dufour vs. Camfrane, viii. 235.

XVII. REPLICATION.

- 74. When the rules require no replication, all means of defence are left open to the plff. Flood and al. vs. Shamburgh, iii. n. s. 622.
- 75. A plff. need not file any replication. Skilliman vs. Jones, iii. n. s. 686.
- 76. If there be a replication, it may be read to the jury, to place before them a charge which might be made ore tenus. Ibid. Ibid.
- 77. A plff. in his replication, cannot claim the benefit of a judgment which is opposed to him on an exception. Mackee and al. vs. Cairnes and al. ii. n. s. 599.
- 78. A replication admits any new fact set forth in the anwer, in avoidance of the claim which it does not deny. Lewis vs. Peytavin, x. 36.

XVIII. CLAIM IN RECONVENTION.

80. A plff. may shew at the trial, that what is claimed

by way of reconvention, is pending in another suit. Pierce vs. Millar, iii, n. s. 354.

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XIX. AMENDMENT.

81. In the first district, leave to amend ought to be asked before the day on which the causes are set down for trial. Chalmers and al. vs. Stow, iii. n. s. 307.

82. A deft. cannot amend his answer, without leave of the court. Robinson and al. vs. Williams, iii. n. s. 665.

83. An amended petition need not be served, but must be answered, or judgment may be taken by default. Free-land vs. Lanfear, ii. n. s. 263.

84. A deft cannot amend by withdrawing an answer, which contains an admission, and pleading the general issue. Vavasseur vs. Bayon, xi. 639.

* 85. After a case is remanded, the plff. may restrict his claim by a supplemental petition. Curtis vs. Graham, i. n. s. 583.

XX. DEFECTS AND IRREGULARITIES WAIVED BY AFTER PROCEEDINGS IN A CAUSE, AND THOSE WHICH ARE NOT.

86. The neglect of one party to prove, what is essential to his recovery, is not cured by the evidence of the other leaving it doubtful. Cornell and Wife vs. Hope Ins. Co. iii. n. s. 223.

87. When a party submits certain points as questions of law, to be decided by the court, the admission of the facts on which they are grounded is implied. Golis vs. His Creditors, ii. n. s. 108.

88. A party who is present when referees are sworn, and makes no objections to the manner in which they are

sworn, cannot afterwards complain of it. Hatch vs. Wat-kins, i. n. s. 156.

89. Attendance before referees waives want of notice. Ibid. 154.

90. Consent to refer a cause is a waiver of the trial by jury. Ibid. Ibid.

91. If a deft. sued in one capacity, suffer an inquiry to be made to establish his responsibility in another, judgment will be given in regard to the proof adduced. John Brown & Co. vs. Richardsons, i. n. s. 202.

92. Under a plea of compensation, if the deft. offer evidence which would support a charge of reconvention, without any objection being made below, none can be made above. *Innis* vs. *Ware*, i. n. s. 556.

• 93. In such a case, a jury may find a verdict for a sum due to the deft. *Ibid. Ibid.*

94. If the general issue and satisfaction be pleaded, the former is waived. Bryans and al. vs. Dunseth and al. i. n. s. 412.

95. If after a motion to dismiss, the deft. proceed to trial, the motion is waived, and can no longer be resorted to. Dean vs. Hubbard, i. n. s. 566.

96. If a plea to the jurisdiction be not noticed in argument in the supreme court, it will be presumed to be abandoned. Richardson vs. Packwood, i. n. s. 299.

97. A deft. who does not plead in abatement, admits that the residence of the parties is correctly stated in the petition. Crouse vs. Duffield, xii. 539.

98. Appearing, pleading, and contesting a suit on other grounds than the want of a citation, cure the want of one. Weimprender's Syndics vs. Weimprender and al. xi. 20. Dyson-and al. vs. Brandt and al. ix. 497.

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99 If there be several defts, and they plead severally, they may have the case so tried; but if they go to trial together, they cannot assign this as error. Sere vs. Armitage and al. ix. 394.

100. If notwithstanding a stay, the trial is proceeded on, the verdict will not be set aside on that account. Livaudais vs. Henry, ii. 143.

101. A deft. by answering, waives all irregularities in the original process. Robinson vs. Drury, i. 206.

102. If a party who has a right to resist the introduction of parol testimony, introduce it himself, he cannot afterwards object to the evidence it furnishes. Lafon's Ex'rx vs. Gravier and al. i. n. s. 243.

103. A party cannot complain of the withdrawal of a paper which has been received in evidence, if he accompany his objection with a declaration that he does not intend to make use of it. Livingston vs. Heerman, ix. 656.

104. After the jury is sworn, it is too late to move that the suit be dismissed on the ground that the plff. did not answer the deft's interrogatories. Woolsey vs. Paulding, ix. 280.

105. Inconsistency in pleas, not objected to below, cannot be complained of on the appeal. Ray and al. vs. Cannon and al. ii. n. s. 26.

106. Whether an action to declare one a bankrupt, and to obtain the rescission of the sale of property made to another, can be joined in the same petition? Dubitatur; but this defect, if it does exist, is cured by the parties not objecting to it at the proper time. Kenney and al. vs. Dow, x. 601.

107. If a citation of appeal against the state be served on the attorney general, who attends and prays the dis-

missal of the appeal, without pleading the ill-service of the citation, the court will proceed to the examination of the case on its merits. State vs. Montegut and al. vii. 449.

108. If the law prescribing the mode of citing creditors be repealed, and proceedings be completed without any objection below or in the supreme court, the error will be waived. Ludeling's Syndics vs. Poydras' Ex'rs, iv. n. s. 637,

XXI. CONTESTATIO LITIS.

109. If a party die after the contestatio litis, the attorney may carry on the suit. Esteve vs. Rochon. Montreud vs. Jumonville. Rochon vs. Montreud, iv. 481.

XXII. SETTING DOWN CAUSES FOR TRIAL.

110. If a suit be continued, and the party has a month to procure a deposition, the cause must be set down anew after that time. Sierra vs. Slort, iv. 587.

XXIII. AGREEMENTS MADE IN A CAUSE.

111. The signature of an endorser must be proven, although it be agreed that the note should be given in evidence so far as it purports to have been made by the drawer. Johnson vs. Duncan and al. Syndics, v. 561.

XXIV. PRAYER FOR GENERAL RELIEF.

112. Under a prayer for general relief, the rent of the premises may be allowed. Church Wardens and al. vs. Peytavin, i. n. s. 400.

XXV. PRAYER FOR THE RETURN OF A NOTE.

113. If the return of a note be specifically prayed for,

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the court will decree the payment of its amount, with a provise that the decree be satisfied by the return of the note. Dubourg and al. vs. Anderson, vii. 268.

XXVI. PRAYER FOR A JURY.

114. A plff. who has prayed for a jury, cannot waive it, and enter judgment for the want of the word defence. Kelly and Lambert vs. Barbin, ii. 47. Sweeny and Carr vs. Same, Ibid. 48.

115. Unless a party have an opportunity of praying for a jury, the court will not try a matter of fact. Lewis vs. Andrews, i. 197.

116. If a party pray for a jury, and suffer the trial to go on without being present, it is a waiver. Le Blane vs. Johns, iv. n. s. 635.

XXVII. TRIAL BY JURY.

117. If leave be given to answer, so as not to delay the trial, a right to a trial by jury is not thereby given up, although to obtain it the trial may be delayed. Tricou vs. Bayon, iv. 169.

XXVIII. STATING OF FACTS TO A JURY.

118. Parties are to be admitted to lay the facts of their case before the jury as naked as they can present them, and no other restriction can be imposed on them than to require that they be pertinent. *Planters' Bank* vs. George, vi. 673.

XXIX. FACTS SUBMITTED.

119. On a trial in which facts are submitted to a jury,

the court cannot charge on a question of law. Livingston vs. Heerman, ix. 656.

120. The facts submitted need not be specially set forth in the petition or answer: it suffices that they grow out of the pleadings. *Ibid. Ibid.*

jury on special facts. Barry vs. Louisiana Ins. Co. i. n. s. 69.

mit others to the jury, the judge is to pronounce judgment on the whole after the contested facts are found by the jury. Golis vs. His Creditors, ii. n. s. 108.

XXX. FINDING OF A JURY.

123. If questions of law be submitted to a jury to be specially found, their finding ought to be disregarded. Center vs. Stockton and al. viii. 208.

124. A court may permit counsel to reduce to form the answer of a jury on an issue submitted, and hand it to them for their consideration. Jackson vs. Larche, xi. 284.

XXXI. MISBEHAVIOUR OF COUNSEL OR JURY.

125. The misbehaviour of the counsel or the jury must be taken advantage of by a motion for a new trial. Morgan vs. Bell, iv. 615.

XXXII. OBJECTIONS TO A VERDICT.

126. Objections to a verdict lose much of their weight in the supreme court, when not made in the court where the cause was tried. Lepretre and al. vs. Mioton, i. n. s. 713.

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XXXIII. CAUSES CONSOLIDATED.

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127. A party cannot by getting the case in which he is plff. consolidated with one in which he is deft. put his opponent out of court by discontinuing the first suit. Williams vs. Trepagnier and al. i. n. s. 273.

128. When causes are consolidated, a court cannot, till they be severed, give judgment on either of them alone. Lafon vs. Riviere, vi. 1.

XXXIV. VIA ORDINARIA ET EXECUTIVA.

129. If the proceedings have been changed from the via executiva to the via ordinaria, judgment may be given generally against the dest. Clay vs. Oldham, iii. n. s. 276.

130. A plff. cannot proceed at the same time by the via ordinaria and the executiva. Gurlie and al. vs. Coquet, iii. n. s. 498.

XXXV. CONTINUANCE.

131. Every application for a continuance should contain a declaration that the evidence is material—that due diligence has been exercised to procure it—that there is a probable expectation of obtaining it, and that a continuance is not asked for improper delay. Allard and al. vs. Lobau, iii. n. s. 293.

132. A party who in order to procure the attendance of a witness, occasions some delay which might have been avoided by taking his deposition, is not guilty of such laches as to prevent his obtaining a continuance. Lee vs. Andrews and al. x. 682.

133. When the propriety of granting a continuance to

a deft. is doubtful, it should be granted. Ibid. 686. Leceme vs. Cottin, ix. 457.

XXXVI. ANSWERS TO INTERROGATORIES.

134. If a party be called on by interrogatories to say whether he has a certain paper, and he answer in the affirmative, it is sufficient for him to produce it at the trial, and his opponent is not entitled to a continuance to examine it. Clay vs. Oldham, iii. n. s. 276.

135. If a plff. fail to answer interrogatories, the deft. may at his option move to dismiss the suit or take them as confessed. Patterson vs. Lafarge, i. n. s. 194.

it ought to appear that the officer before whom the oath was taken, had authority by the laws of the country to administer oaths. Center vs. Stockton and al. viii. 208.

137. If the answers to interrogatories do not appear to have been properly sworn to, the adverse party need not except to them, but may treat them as nullities. *Ibid. Ibid.*

138. Although an answer to an interrogatory be excepted to, and the exception sustained, the adverse party has no right to withdraw it. *Poston* vs. *Adams*, v. 272.

139. Answers to interrogatories contradicted by one witness only will make proof, unless his testimony be supported by strong corroborating circumstances. Stafford vs. Stafford, i. n. s. 648.

XXXVII. PRESUMPTIONS.

140. Every thing in judicial proceedings is presumed to have been correctly done. Trepagnier's Heirs vs. Butler and al. xii. 534.

141. If the sheriff's return shew that copies of the petition and citation were served on the deft. it will be presumed that they were served according to law. Fleming vs. Conrad, xi. 301.

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142. If a copy of a deed come up with the record, it will be presumed that the deed was duly proven below. Sides vs. M'Cullough, vii. 654.

XXXVIII. DISCONTINUANCE.

143. When a suit is not on trial before a jury, it cannot be discontinued without the leave of the court. Hunt vs. Morris and al. vi. 676.

144. A plff. may discontinue at any time before trial. Petit vs. Gillet, v. 20.

145. And with leave of the court after the trial has begun. Lafon vs. Riviere, v. 500.

146. A plff. may discontinue after a demurrer to evidence. Durnford vs. Johnson, ii. 306.

147. A plff. except in a hard action, will be allowed to discontinue before a verdict, or the opinion of the court is known. Read vs. Baily, ii. 314.

148. A plaintiff against whom a plea of reconvention is filed cannot discontinue. Lanuse's Syndics vs. Pimpienella, iv. n. s. 439.

XXXIX. JUDGMENT.

149. No judgment can be given against a party who is not in court by his person or property, nor any final one till after answer filed, or judgment taken by default. Woodward and al. vs. Braynard and al. vi. 572.

150. A plff. (by the introduction of evidence by the deft.)

may obtain judgment on a different ground than that pray. ed for in the petition. Labarre vs. Lambert, iii. n. s. 300.

XL. CAUSES TRANSFERRED.

151. Causes that were sent out for trial to a neighboring district before the act of 1814, are to be sent back. Lalande vs. Fontenau and al. iii. 716.

XLI. REMOVAL OF CAUSES TO THE COURT OF THE UNITED STATES.

152. The transfer of a cause to the court of the United States, must be claimed on entering appearance. Richardson vs. Packwood, i. n. s. 299. Johnston's Ex'rs vs. Wall and al. i. n. s. 542. Duncan vs. Hampton, xii. 94.

153. It is not too late to pray for the transfer of a cause to the court of the United States, after a judgment by default is set aside, if it were improperly taken. Duncan vs. Hampton, xii. 92.

154. A citizen of another state, praying for the removal of a suit to the court of the United States, must shew that the plff. is a citizen of the state in which the suit is brought. Beebe vs. Armstrong, xi. 440.

155. The state courts are judges of the sufficiency of the sureties offered on an application to remove a cause to the court of the United States; and the supreme court will not interfere, if that discretion be properly exercised. Fitz's Syndies vs. Hayden, iv. n. s. 653.

156. In such applications, evidence must be given that the deft. is a citizen of another state. Louisiana S. Bank vs. Morgan and al. iv. n. s. 344.

157. A petition to remove a cause to the United States' court, need not be filed personally. Fisk vs. Fisk, iv. n. s. 676.

158. A party is not precluded by the acts of the attorney appointed by the court to defend him in his absence. Ibid.

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XLII. RULE TO SHEW CAUSE.

159. If a rule to shew cause be neither enlarged nor made absolute on the day given, it cannot afterwards be discharged, without notice to the party who obtained it. D'Auterive vs. Leto, vii. 357.

160. On a rule to shew cause why the order, suspending the sale of property, taken on an order of seizure and sale, should not be set aside, the merits cannot be gone into. Abat vs. Poeyfarre, viii. 433. Fisher and Taylor vs. Hood, ii. 113.

XLIII. SERVICE OF DOCUMENTS, PAPERS, &c.

161. Service of a copy of a judgment on the bail, is not legal. Frisby vs. Sheridan, iii. n. s. 242.

XLIV. MOTIONS.

162. Motions for a new trial are always addressed to the legal discretion of the court. Roberts vs. Rodes, iii. n. s. 100.

163. On motion for a new trial, the court, not the party, must judge whether or not due diligence was used to procure testimony. Loccard vs. Bullitt, iii. n. s. 170.

164. Proceedings against a person having no interest in a suit, may be stayd on motion of a person interested. Livingston vs. D'Orgenoy, i. 96.

XLV. PROCEEDINGS AGAINST BAIL.

165. Proceedings against bail need not pursue the form of a new action. Hall vs. Farrow's Bail, ix. 391.

good. Ibid. Ibid.

XLVI. PROCEEDINGS OF AN INFERIOR COURT IN CASES REMANDED.

167. When a case is remanded, after the reversal of the judgment, the inferior court may act on the verdict theretofore rendered. Muse vs. Curtis, ix. 82.

XLVII. OPINION OF THE JUDGE.

168. A party has a right to have the opinion of the judge spread upon the record on any point of law arising in the cause. Livingston vs. Heerman, ix. 195.

169. If he be dissatisfied therewith, and state his objections at the time, he may draw his bill of exceptions afterwards. *Ibid. Ibid.*

XLVIII. TIME ALLOWED COUNSEL FOR ABSENT DEBTORS, &c.

170. Seven months is not too long a period for the counsel of an absent debtor, residing in France, to obtain information as to the witnesses to be examined. Lecesne vs. Cottin, ix. 454.

Vide Abatement, 1. Administrator, 2. Amendment. Answer, 1. Assignment, 10. Attorneys, 14, 43. Award, 3. Bankruptcy, 1. Books and Papers—production of. Continuance. Disability. Evidence, 124, 125, 126. Exceptions, 4. Fraud, 1. Interrogatories, 4. Issue. Judgment. Louisiana State Bank. Solidarity. Public School. Purchaser, 9. Sale. Signature. Special Facts, Surety. Witness. Appeal. Claim. Admission. Notice. Supreme Court.

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PRESCRIPTION.

1. Prescription is not pleadable to an action for free-dom. Delphine vs. Deveze, ii. n. s. 650.

2. It is interrupted by an action in which the plff. is non-suited. Chretien vs. Theard, ii. n. s. 582.

3. It does not run against him who cannot sue. Hernandez and al. vs. Montgomery, ii. n. s. 422.

4. Actions to set aside contracts as fraudulent, are prescribed against in one year after the fraud is discovered. Syndics of Weimprender vs. Weimprender, ii. n. s. 591.

5. But when the debtor is insolvent, it need not be commenced till after the settlement of the estate. *Ibid.*

6. The claim of an attorney at law for his services is prescribed against in three years. *Morse* vs. *Brand*, ii. n. s. 515.

7. Prescription does not begin to run until the condition be accomplished. Le Changeur vs. Gravier's Heirs, ii. n. s. 545.

8. In redhibitory actions, prescription runs from the time the defects were discovered. Reynaud and Sucko vs. Guillot and Boisfontaine, i. n. s. 227.

9. Prescription must be pleaded, otherwise it is presumed to be waived. Dunbar vs. Nichols, x. 184. Brown and al. vs. Duplantier, i. n. s. 312.

10. Prescription of ten years against minors, runs only in case the legal formalities have been observed in the alienation of their property. Gayoso De Lemos vs. Garcia, i. n. s. 324. Dufour vs. Camfranc, xi. 716 and 717. Françoise vs. Delaronde, viii. 619.

11. If there be error on the part of the vendor in deliv-

ering, and on the part of the vendee in receiving property, the latter cannot avail himself of prescription. Barbineau vs. Cormier, i. n. s. 456.

- 12. Digging a canal and felling trees, are not such acts of possession as may be the basis of the prescription of thirty years. Macarty vs. Foucher, xii. 11. Prevost's Heirs vs. Johnson and al. ix. 123.
- 13. In case prescription be pleaded to a right of passage, the party against whom it is offered must give evidence of such acts as will take the case out of it. Powers vs. Foucher, xii. 70.
- 14. Particularly if his title commence so far back as the year 1772, and there be no evidence of the enjoyment of the servitude. *Ibid. Ibid.*
- 15. If the vendor be a transient person, and withdraw from the state immediately after the sale, the vendee may bring his action for the rescission of the sale on the return of the former, although more than the time of prescription has elapsed. *Morgan* vs. *Robinson*, xii. 76.
- 16. An obligation in the alternative, gives the debtor the choice; hence, where A. promised to pay B. five hundred dollars, or convey a tract of land to him, held that this was not such a title as to enable the latter to prescribe. Holstein vs. Henderson, xii. 320.
- 17. Prescription cannot be pleaded in the supreme court.* Boudreau vs. Boubreau, xii. 667.
- 18. The prescription of ten years does not run against a minor. Calvit vs. Innis, x. 287.
 - 19. In order that the possessor may unite the posses-

^{*} Prescription may be pleaded for the first time in the supreme court, if the evidence of it appear on the record. See new Civil Code, article 3428. Also, Code of Practice, article 902.

sion of his predecessor to his own, to enable him to prescribe, it must have been in good faith, continued, and without interruption. Innis vs. Miller and al. x. 289.

20. It must be that which he had at the time of the tradition. bid. bid.

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21. If the plea of prescription be received at the trial, the party pleading it must be permitted to submit the fact of his possession to the jury. Porter vs. Dugat, ix. 92.

22. If a slave be claimed by prescription, the question is to be examined according to the laws of the country. in which he was acquired. Broh vs. Jenkins, ix. 526.

23. A promissory note prevents the prescription of one year. Turpin vs. His Creditors, ix. 562.

24. The action inofficiosi testamenti, is barred by the lapse of five years. Carrel's Heirs vs. Cabaret, vii. 375.

25. A testator's concubine may prescribe under his will against his brothers and sisters. Ibid. Ibid.

26. Settlers entitled to a grant under the act of congress of March 2d, 1805, may prescribe from that day. King and al. vs. Martin. v. 97.

27. The party pleading prescription cannot be compelled to answer on oath, whether he has paid the debt-Burke vs. Flood, v. 403.

28. The prescription of twenty years is required of a slave, claiming his freedom in the absence of his master. Metayer vs. Noret, v. 566.

29. Land, not susceptible of alienation, cannot be acquired by prescription. Mayor and al. vs. Magnon, iv. 2.

30. If a tutor sell the real estate of his ward, the purchaser will be quieted by a possession of four years after the ward becomes of age. O'Connor vs. Barre, iii. 446.

31. The time of prescription in a suit for a partition, is. thirty years. Pizerot and al. vs. Meuillon's Heirs, iii. 97.

32. To entitle the purchaser to land by prescription, he must shew a continued uninterrupted possession during ten years, in him or his vendees. Riviere vs. Spencer, ii. 82.

33. A parol admission of the debt by the testator, does not enable workmen and domestics to repel the plea of prescription.* Lafon's Heirs vs. His Ex'rs, iii. n. s. 707.

34. A sale not signed by the vendor, cannot be the basis of prescription. Bonne and al. vs. Powers, iii n. s. 458.

35. In prescription, good faith is necessarily the basis of a good title. Ibid. Ibid. Mayes vs. Calvit, xii. 378.

- 36. Services rendered by the plff. for the deft. on board of his steam-boat, cannot be connected with those rendered on board of another boat in which he had an interest, in order to repel the plea of prescription as to former services. Chadwick vs. Waters, iii. n. s. 432.
- 37. Prescription does not run against a wife in favor of the purchasers of her property, although separated from that of her husband. Prudhomme vs. Dawson and al. iii. n. s. 161.
- 38. Purchasers under the same title, without partition, cannot prescribe against each other by the lapse of ten years. Browsard vs. Duhamel, iii. n. s. 11.

39. The action of trespass is prescribed by the lapse of one year. Deliole vs. Margan, ii. n. s. 24.

- 40. A party claiming land without a title, can avail himself of nothing, but the prescription of thirty years. Rousseau vs. Henderson and al. xii 635.
- 41. The full period of prescription must be reckoned from its interruption. Riviere vs. Spencer, ii. 83.
- 42. Ten years is the period of prescription, when the possessor claims under a title adverse to the claimant. L. & F. Frique vs. Hopkins and ul. iv. n. s. 212.

^{*} See new Civil Code, art. 3486.

43. Good faith is sufficient for the prescription longi temporis. Ibid. Ibid.

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44. But if the title be null in itself, or disclose facts which shew that the vendor had no title, the vendee cannot plead this prescription. *Ibid. Ibid.*

45. An action for damages done to goods on board a steam-boat, is not prescribed by the lapse of one year. Jourdan vs. White, iv. n. s. 335.

46. An order to record a will enables a party to plead prescription under it. Clark's Heirs vs. Barham's Heirs, iv. n. s. 411.

47. Prescriptions do not apply to what is pleaded as exceptions. Bushnel vs. Brown's Heirs, iv. n. s. 499.

48. The prescription of three years protects a bona fide purchaser of a stolen moveable thing in market overt.* Davis vs. Hampton, iv. n. s. 288. Harper vs. Destrehan, ii. n. s. 389.

Vide Purchaser, 13. Fraud, 5. Partition, 6. Quanti Minoris Action, 6. Redhibition. Sale. Will, 4.

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PRESUMPTION.

1. A house keeper permitting the man she lives with to receive the hire of her negroes during many years, without ever calling him to account during his life, is presumed to have allowed the money thus received, as her part of the household expenses. Tonnelier vs. Maurin's Ex'r, ii. 206.

2. From the sole circumstance of the claimant's being in the deft's service, it cannot be inferred, that the property

^{*} See new Civil Code, art. 2747.

attached belonged to the latter, and not to the former. Harris vs. Armstrong and al. ii. n. s. 256.

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Vide DEBTOR IN CONFINEMENT. CA. SA.

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- 1. A teacher in the school of an insolvent, has no privilege. Labat vs. Labat's Syndics, ii. n. s. 652.
- 2. Neither has the foreman of a taylor for his wages. Lauran and al. vs. Hotz, i. n. s. 140.
- 3. A vendor of an immoveable, who does not record his lien in the parish in which the premises are situated, loses his privilege. *Morrison and al.* vs. *Trudeau*, i. n. s. 384.
- 4. On a lease for one year, the rent payable monthly, the lessor has a privilege for arrearages beyond the last month. *Dorsey* vs. *Vidal*, i. n. s. 718.
- 5. Persons sending property to be sold on commission, have no privilege as to the proceeds, unless they be traced and identified in the hands of the insolvent. Ward vs. Brandt and al. Syndics, xi. 331.
- 6. The vendor has a privilege on the proceeds of goods in the vendee's possession at the time of the failure, and sold by the syndics. Millaudon vs. N. Orleans Water Co. xi. 278. Hobson and al. vs. Davidson's Syndic, viii. 422.

7. If the lessee give his note for rent, and afterwards fail, the landlord has a privilege on the goods in the house. Paulding vs. Ketty and al. Syndics, ix. 186.

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ind Co. 8. The vendor of moveable goods has a privilege on them whilst they remain in the hands of the vendee. Hobson and al. vs. Davidson's Syndic, viii. 422.

9. Privilege for law expenses is allowed only on the taxed costs of court. Ellery vs. Amelung's Syndics, ii. 242. Elmes vs. Esteva's Syndics, Ibid. 264.

10. A vendor who has received part of his payment, may demand, in case of the insolvency of his vendee, the whole of the thing sold on returning what he has received, or may cause the thing to be sold to raise the balance.

Milne vs. Amelung's Syndics, ii. 209.

11. The act of 1817, does not require that an anterior contract, which gave a privilege in cases of insolvency, should be recorded. *Turpin* vs. *His Creditors*, ix. 562.

12. A seizure of land by one creditor, gives no preference over the claims of others. United States and al. vs. Hawkins' Heirs, iv n. s. 317.

Vide Attorneys, 15. Curator, 8. Interest, 3. Landlord. Minors. Mortgages. Trustee. Vendor and Vendee. Also, New Civil Code, art. 2746.

1. A purchaser is not be essently in had faith from the confidence ement of the .32IMO394 house is a large out of the

1. A promise to deliver a sound and likely negro boy, aged, &c. who is valued at twelve hundred dollars, is discharged by the delivery of such a one. Cavenah vs. Crummin, xii. 306.

2. If he who promises to deliver sugar on a given day, fail to do so, the creditor may demand damages in money. Pepper vs. Peytavin, xii. 671.

(4. The vendor of inventor goods to su priving dear

PROTEST.

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1. The protest of a bill of exchange proves itself. Countrys. Sagory, iv. 81.

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PUBLIC SCHOOL.

1. The majority of the administrators of a public school may sue in their own names. Paillette and al. vs. Carr, iii. 489.

Vide PRACTICE.

PURCHASER.

Mr. W. Mile Cont. Com

- 1. A purchaser is not necessarily in bad faith from the commencement of the suit. *Prudhomme* vs. *Dawson and al.* iii. n. s. 161. *Packwood* vs. *Richardson*, i. n. s. 405.
- 2. A purchaser at sheriff's sale cannot refuse payment on the ground that he bought without title, and must be evicted. Abat vs. Casteres, iii. n. s. 220. Same vs. Vallet, Ibid. Ibid.

3. The remedy of the Spanish law against a purchaser at sheriff's sale, by imprisonment, is not unconstitutional. *Ibid. Ibid.*

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4. A purchaser of land, at a probate sale, has no recourse against the estate for the value of the improvements put up by a third party, if the land were sold as it belonged to the estate. Rutherford's Representatives vs. Martin's Heirs, iii. n. s. 63.

5. A purchaser at a probate sale, is not entitled to the action of redhibition. Pintard and al. vs. Deyris, iii. n. s. 32.

6. A purchaser who bought without legal formalities, cannot, when sued by the vendor, claim security against his (the vendor's) title. *Ingrem and al.* vs. *Ingrem*, iii. n. s. 369.

7. He cannot claim a diminution of the price for a deficiency in the quantity of less than one-twentieth. Fortin vs. Blount, i. n. s. 179.

8. A purchaser at a sheriff's sale cannot be affected by posterior irregularity on the part of the sheriff. Aubert vs. Buhler and al. iii. n. s. 489.

9. If a bill of sale state that the purchasers gave his note for fifteen hundred dollars, they may shew that each, there being two, gave a note for seven hundred and fifty dollars. Lafariere vs. Sanglair and al. xii. 399.

10. A purchaser of land, in danger of eviction, may withhold payment Duplantier vs. Pigman, iii. 236. Clark's Ex'rs and al. vs. Farrar, Ibid. 247.

11. A purchaser at a sheriff's sale, gets no better title than the deft. had. Bujac and al vs. Mayhew, iii. 615. Fowler's Syndics vs. Dupassau, Ibid. 576. Flower and al vs. Arnaud, iv. n. s. 73.

12. A purchaser of land, for the recovery of which no

suit is instituted, is not a purchaser of a litigious right. Prevost's Heirs vs. Johnson and al. ix. 123.

- 13. If a bona fide purchaser of a stolen moveable thing in market overt, be evicted before the expiration of three years, the owner will not be bound to pay the amount of purchase money. Davis vs. Hampton, iv. n. s. 288. Harper vs. Destrehan, ii. n. s. 389.
- 14. A purchaser at sheriff's sale is not responsible for irregularities anterior to the issue of the order of sale. Livingston vs. Waldon, iv. n. s. 456.

Vide Courts of Probates, 6. Debtor and Creditor, 3. Heir, 4. Mortgages. Possession. Vendor and Vender Riparious Estate. Sale. Title. Prescription, 38, 47. Auctioneer, 2. Practice.

QUANTI MINORIS ACTION.

- 1. Although the time to bring the action of recission or quanti minoris be elapsed, the vendee may successfully oppose the vendor's suit. Davenport's Heirs vs. Fortier and al. iii. n. s. 695. Thompson vs. W. and H. Milburne, i. n. s. 468.
- 2. Although the action quanti minoris, does not lie on a judicial sale, on account of a vice or defect in the thing sold, the vendee may avail himself of want of quantity. Davenport's Heirs vs. Fortier and al. iii. n. s. 695.
- 3. The action quanti minoris may lie for a vendee who has sold the thing to advantage: that circumstance is no defence to the action. Brown and al. vs. Duplantier, i. n. s. 312.

4. The vendor's ignorance of a defect in a slave, does not protect him from the action quanti minoris. Moore's Assignee vs. King and al. xii. 261.

5. But if the vendee in such a case being sued for the price, answer that he is entitled to relief, and pray that his vendor may say on oath whether the defect complained of existed at the time of the sale, and make no offer to return the slave, this at least on the appeal will be held sufficient notice of the defence. *Ibid. Ibid.*

6. The action quanti minoris, must be brought within one year. Millaudon vs. Soubercase, iii. n. s. 287.

QUANTUM MERUIT.

1. A party who depended on the generosity of his employer, has no claim on his justice on a quantum meruit. Jacob and al. vs. Ursuline Nuns, ii. 269.

Vide Agent, 28. Attorneys, 28. Auctioneer, 3. Overseer. Sheriff.

RACE.

1. If an object be staked on a race, and a second one is run in lieu of the first, such object is no longer at stake. Vernot vs. Yocum, iii. 406.

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RAPIDES.

1. The limits of the post of Rapides, have never been correctly defined by any act of the Spanish government. Baldwin vs. Stafford and al. x. 416.

2. They must be taken as recognised de facto by the officers of Spain and of the late territory. Ibid. Ibid.

RECONVENTION.

- 1. Although an unliquidated demand cannot be pleaded in compensation, it may under certain circumstances be opposed by way of reconvention. Agaisse and al. vs. Guedron and al. ii. n. s. 73. Evans and al. vs. Gray and al. xii. 483.
- 2. Damages for an injury cannot be claimed in reconvention, one year after its infliction. Ritchie vs. Wilson, iii. n. s. 585.
- 3. A trespasser cannot plead reconvention nor compensation. *Innis* vs. *Ware*, i. n. s. 556.

Vide PRACTICE, 80, 148. SET OFF AND COMPENSATION.

REDHIBITION.

1. In an action of redhibition, the thing is given back, and the price claimed. Roberts vs. Rodes, iii. n. s. 100.

- 2. No action of redhibition lies on a judicial sale. Abat vs. Casteres. Same vs. Vallet, iii. n. s. 220.
- 3. If a disease was curable in its origin, but incurable at the time of the sale, the case is a redhibitory one. St. Romes vs. Pore, x. 30.

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- 4. In a redhibitory action commenced within six months after the discovery of the defect, the plff. must shew the time of discovery. Chretien vs. Theard, xi. 11.
- 5. If a redhibitory defect be mala fide excluded from the warranty, the vendor is liable, notwithstanding the exclusion. Macarty vs. Bagnieres, i. 149.
- 6. When a verdict finds that a slave who died, had the consumption at the time of the sale, the disease may fairly be presumed to have been incurable. Desdunes vs. Miller, ii. n. s. 53.
- 7. Any disease with which a slave is afflicted at the time of sale, which has proceeded so far as to be incurable, may be pleaded as a redhibitory defect. Thompson vs. W. and H. Milburn, i. n. s. 468.
- 8. In such case, if the slave die, the burthen of proof as to the curability of the disease, lies on the vendor. 16. 16.
- 9. Although several slaves be sold together for a single price, the sale will not be rescinded for all, if any of them or a number less than the whole, have any redhibitory defect. Andry and al vs. Foy, vi. 689.
- 10. The rescission of a sale cannot be demanded on account of a capital crime committed by a slave immediately after the sale. Zanico vs. Habine, v. 372.
- 11. If a slave have at the time of the sale the seeds of a disease, of which he afterwards die, the vendee shall recover the price. Dewees vs. Morgan, i. 1.
 - 12. A sale will be rescinded if the services of the slave

appear to be so inconvenient, difficult, and interrupted, that it is presumed he would not have been bought had they been known by the vendee to be so. Blondeau vs. Gales, viii. 313.

13. The act of a slave stealing need not be accompanied with force to constitute a rehibitory defect. Chretien vs. Theard, iii. n. s. 582.

Vide PRESCRIPTION, 8. PURCHASER, 5. QUANTI MINORIS ACTION. SLAVE. WARRANTY.

REFEREES.

1. Whether a case may be sent before referees, when a jury is prayed for? Caulker vs. Banks, iii. n. s. 532.

2. A judge may refuse to send a cause before them, although there be long and intricate accounts. *Ibid. Ibid.*

3. When the record does not shew that a case was referred by consent, the reference will be presumed to have been made under the act of assembly. Syndics of Brooke vs. Hamilton, i. n. s. 632.

4. A report of referees cannot be used in another suit, unless it be confirmed. Lefevre vs. Bariteau, vii. 438.

5. After praying that their report be made the judgment of the court, the party making such application cannot attack it for want of formality. Bariteau vs. Lefevre, v. 401.

6. If they report a balance due to the deft. he cannot have judgment therefor. *Ibid. Ibid.*

7. If a case be left to persons appointed by the parties, whose report is to be the judgment of the court, they need

not be sworn, state any account, or give the reasons for their opinion. Talcott vs. M'Kibben and al. ii. 298.

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- 8. Referees may report specially. Syndics of Segur vs. Brown, i. 266.
- 9. The return of referees is always submitted to the judgment of the court. *Mericult* vs. *Austin*, iii. 318.

 Vide Practice, 88, 89, 90. Award. Arbitrators.

RENT.

- 1. When the tenant holds over, after notice to quit, and a declaration that a specified higher rent will be required, no greater rent can be recovered than that previously paid, without evidence of the value of the rent, or of damages sustained by the landlord. Rodriguez vs. Combes and al. vi. 275.
- 2. If land be decreed to be conveyed on payment of a sum, no rent is due in the meanwhile. Syndics of Bermudez vs. Ibanez, iii. 168.

Vide LANDLORD. LESSOR AND LESSEE.

RENUNCIATION.

Proceedings in case of head out on

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1. Although the heirs renounce their inheritance, a creditor cannot, without letters of curatorship, obtain an injunction to stay a sale under a fi. fa. issued on a judgment against the executor. Vienne vs. Boissier, x. 359.

2. If a wife do not renounce in due time, she will be bound to pay one-half of the debts of the community. Lauderdale vs. Gardner, viii. 716. Cox vs. Same, Ibid. 726,

3. It is not necessary to the validity of a renunciation by a married woman at a sale of her property, that it should be done under oath. Lafarge vs. Morgan and al. xi. 462.

Vide FEME COVERT. WIDOW.

RESERVATION.

1. The reservation of a passage of thirty feet for the purposes which may be convenient and important to the grantor in a Spanish deed, is a reservation, not of the right of way, but of the soil itself. Ducournau vs. Marigny, iv. 709.

RES INTER ALIAS ACTA.

1. Proceedings in case of insolvency are res inter alias acta, as to a creditor not on the bilan, and whose claim is not noticed there. Bainbridge vs. Clay, iii. n. s. 262.

RES JUDICATA.

1. A judgment against a person who sues for the abate-

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ment of a nuisance, does not form res judicata against another plff. who brings a similar action. Allard and al. vs. Lobau, iii. n. s. 293.

2. A judgment of eviction cannot be pleaded as res judicata, against a claim against the vendor for damages. Goodwin vs. Heirs of Chesneau, iii. n. s. 409.

3. Res judicata, on a plea in bar, conclusive evidence between the same parties, or those claiming under them. Dufour vs. Camfranc, xi. 607.

4. Res judicata, is when the same thing is demanded for the same cause, in the same capacity, and by and from the same persons. Cloutier vs. Lecomte, iii. 481. Hawkins vs. Gravier and al. ix. 727.

5. A judgment is not res judicata as to those who are not parties thereto. Augustin and al. vs. Cailleau and al. v. 464.

6. The liquidation of a Spanish tribunal conclusive. St. Maxent's Syndics vs. Segur, iii. 371.

Vide Partnership, 12. Practice, 62, 65.

RESPITE.

- 1. Three-fourths of the creditors on a bilan are necessary to concur in a forced respite. Dauphin and al. vs. Soulie, iii. n. s. 446.
- 2. The like number, in such a case, must concur to bind those who are absent. Young vs. Gilly, iii. n. s. 504. Clavier vs. His Creditors, ix. 390.
- 3. The laws relating to respites, which were in force in Louisiana before the adoption of the constitution of the

United States, are not repealed by that instrument. Chalmers and al. vs. White and al. ii. n. s. 315. Blanque's Syndic vs. Beale's Ex'rs, i. n. s. 427.

- 4. After a respite is granted, the debtor cannot legally give any preference to one creditor. Brandt and al. Syndics vs. Shaumburgh, ii. n. s. 329.
- 5. An order given at the beginning of the proceedings to obtain a respite, ceases with the grant of it. Abat vs. Michel, i. n. s. 240.
- 6. When a respite is granted, the stay of proceedings which precedes it, cannot operate as a bar to an action for a breach of the conditions on which it was granted. Ward vs. Brandt and al. x. 641.
- 7. A creditor who joined in the grant of a respite, may sue, if before the expiration of it, his debtor becomes insolvent. M'Bride vs. D. and N. Crocheron, v. 105.

Vide Insolvent. Bail, 8. Surrender. Cessio Bonorum. Bankruptcy.

RESPONSIBILITY.

- 1. If A. write to B. that C. being unacquainted in New-Orleans, will be indebted to B's politeness for assistance, and his bill on his father will be honored, A. will be responsible to B. tor the payment of the draft if dishonored. Amory and al. vs. Boyd, v. 414.
- 2. If a person recommending his friend as trust worthy, says, the debt will be paid, and if not he will be responsible—a recovery may be had against him on his

friend's note, given posterior to the promise. Herries vs. Canfield and al. ix. 385.

Vide Agent, 14. Attorneys, 5, 10. Auctioneer, 1. Bailment. Banks, 1, 5, 10, 12. Carrier. Consignee, 1. Executor. Factor. Joint Ownership. Justice of the Peace. Office. Parish Judge. Partnership. Servants. Ship Owners. Surety. Tort. Damages.

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RIPARIOUS ESTATE.

1. The purchaser of a riparious estate under the words "front to the levee," does not acquire the alluvion or batture, when there is land susceptible of separate ownership beyond the levee. Livingston vs. Heerman, ix. 656.

2. The words "front to the river" designate, prima facie, a riparious estate. Morgan vs. Livingston and al. vi. 19.

3. The vendee of a riparious estate acquires a qualified property in the bank of the river, and consequently in the batture which may be added to it. *Ibid. Ibid.*

4. An intervening highway does not prevent this, if the owner of the estate be bound to repair the way, and the soil of it be at his risk. *Ibid. Ibid.*

ROAD.

1. The right given the navigation company to make a road on the bank of the bayou St. John, is not a surrender

of the sovereignty of the public. Allard and al. vs. Lobau, iii. n. s. 293.

2. The right of the state to make roads is not limited to the banks of navigable rivers. *Ibid. Ibid.*

3. A freeholder who signed the return for a road under the jurat of a justice of the peace, cannot afterwards be permitted to prove that he was not sworn. Innis vs. Kemper, iii. n. s. 119.

SALE.

1. What constitutes a sale, evidence thereof, delivery of a thing sold, and the effect of want of delivery.

II. Sale generally.

III. Payment of the price.

IV. Judicial Sales.

V. Sales by Sheriffs.

VI. Notarial Sales.

VII. Sales by auction.

VIII. Vente a Remeré.

IX. Lesion.

X. Action of Rescission.

I. WHAT CONSTITUTES A SALE, EVIDENCE THEREOF, DELIVERY OF A THING SOLD, AND THE EFFECT OF WANT OF DELIVERY.

1. The words, "I do sell" in an instrument, amount to a sale. Crocker vs. Nuley and al. iii. n. s. 583.

2. The consent of a vendee may be given after the sale, and proved aliunde. Ibid. Ibid.

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3. A process verbal of the register of wills, is evidence of a sale. Zanico vs. Habine, v. 372.

4. A receipt acknowledging the payment of the price, is evidence of the sale. Richards vs. Nolan and al. iii. n. s. 336.

5. A deed is of itself evidence of the vendor's consent that the vendee should take possession, when the thing sold is not at the time, in that of a third person—and this consent is itself a legal delivery. Fortin vs. Blount, i. n. s. 179.

6. If both vendor and vendee after a sale, remain in the house sold, possession follows the title. Richards vs. Nolan and al. iii. n. s. 336.

7. It is sufficient that the vendee take possession of real estate, sold by the consent of the vendor. Cuvilier vs. M'Donogh, vi. 564.

8. When the vendee by the contract of sale rents the premises to the vendor, no delivery or possession is necessary. Highlander vs. Fluke and Vernon, v. 442.

9. A sale without delivery, does not prevail against a second one, accompanied by it. Smoot and Dinsmore vs. Baldwin, iii. n. s. 84.

10. If a ship be sold in New-York, while she is at sea, she cannot on her arrival in New-Orleans be attached for a debt of the vendor. Thurst and al. vs. Jenkins and al. vii. 318.

11. A ship sold in Philadelphia, while she is in the port of New-Orleans, may be attached for a debt of the vendor before the vendee takes possession. *Price* vs. *Morgan*, vii. 707.

12. An order for the delivery of the thing sold, is not a delivery of it. Norris vs. Mumford, iv. 20.

13. A creditor of a vendor may attach the thing sold before the delivery thereof. *Ibid. Ibid.*

14. A sale without delivery does not transfer the property. Durnford vs. Syndies of Brooks, iii. 222.

15. A sale by a ceding debtor is void. Syndics of Ellinghaus and al. vs. Gravier, iii. 385.

II. SALE GENERALLY.

16. If he who advances the price, take a bill of sale in his own name, he cannot be disturbed till he be reimbursed. Villars vs. Morgan, iii. n. s. 529.

17. A sale of land under private signature is binding, although it recite the intention of the parties to have a notarial act of it executed. *Poeyfarre* vs. *Delor*, vi. 10.

18. An act of sale not recorded, does not affect the rights of third persons, claiming under the same vendor. Bujac and al. vs. Mayhew, iii. n. s. 616.

19. In a sale by tale, when the things are delivered to the vendee, they are his property, although they remain at the vendor's risk until they be counted, weighed, or measured. Shuff vs. Morgan and al. ix. 592.

20. A sale not signed by the vendor cannot be the basis of prescription. Bonne and al. vs. Powers, iii. n. s. 458.

21. A want of title in a vendor does not make void a conveyance of property, if he afterwards acquire the right of the true owner. M'Guire vs. Amelung and al. xii. 653. Bonin and al. vs. Essayline, Ibid. 228.

22. When land is sold for a partition, the rules relating to sales on a fi. fa. do not necessarily apply. Dufau and al. vs. Massicot and al. iii. 289.

23. Whether an act of sale which acknowledges payment, be one of those which the law requires to be made double? Simmins, f. m. c. vs. Parker, iv. n. s. 200.

24. A litigious right may be sold. Ibid. Ibid.

25. A sale by a citizen of this state in New-York, though valid by the laws of that state, is void here, if made at a time he is in failing circumstances. Thorn and al. vs. Morgan and al. iv. n. s. 392.

26. Payment is not a suspensive condition of a cash

sale. Hill vs. Morgan, iv n. s. 475.

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27. An ordinance of a Spanish governor in 1770, of which neither the original nor a copy can be produced, requiring all sales of land to be made before a notary, (no authority in the governor being shewn to change the general law of the land, and the superior court of the late territory having refused to recognise it) will not now be regarded. Gonzales and al. vs. Sanchez and al. iv. n. s. 657.

III. PAYMENT OF THE PRICE.

28. The price cannot be withheld on the ground that the premises are minor's property, and that the legal formalities were not observed. Herriman vs. Mulhollan, i. n. s. 605.

IV. JUDICIAL SALES.

29. A judicial sale does not transfer the property of a third person, if the proceedings are not otherwise regular, and legally authorize it. Leonard's Tutor vs. Mandeville, ix. 489. Cresse vs. Marigny, iv. 54.

V. SALES BY SHERIFFS.

30. Payment of the price at a sheriff's sale is indispen-

sable to the transfer of the property, unless waived by the plff. Baudin vs. Roliff and al. Robertson and al. Interpleaders, i. n. s. 165.

31. If the deft. obtain credit, he cannot object to any arrangement by which the plff. releases the purchaser. *Ibid. Ibid.*

32. If a sheriff sell a runaway slave, without fulfilling the formalities which the law requires, and in consequence thereof the slave be recovered from the vendee, the latter may recover damages therefor. Fleming and Wife vs. Lockart, x. 308.

33. In such a suit, notice to the sheriff of the former suit need not be proven to have been given him; but he may shew any fact which his vendee might have availed himself of in the former suit. *Ibid. Ibid.*

34. A bid at a sheriff's sale must be followed by a tender of the money, otherwise it may be disregarded. Durnford vs. Degruys and al. Syndics, viii. 220.

35. A runaway slave cannot be sold by the sheriff till two years after the advertisement. Labranche vs. Watkins, iv. 391.

36. If a sheriff sell a runaway slave, and immediately take a bill of sale from the vendee for the same price, the sale will be presumed to be fictitious. *Ibid. Ibid.*

37. In a sale by the sheriff of real property on a credit, a deed of mortgage signed by the vendee is not necessary. Clark's Ex'rs vs. Morgan, iv. 269.

38. Whether a sale on a seizure is to be conducted as on a fi. fa? Anonymous, i. 132.

39. A sheriff's sale of immoveable property, cannot be established by parol evidence. Dufour vs. Camfranc, xi. 675.

40. Immoveable property at a sheriff's sale, does not pass by the adjudication—his deed is essential. Ibid. Ibid.

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41. If the sheriff make levy before the return day, he may sell after it. Aubert vs. Buhler and al. iii. n. s. 489.

42. After a sheriff has struck off property to the last and highest bidder, he is not to set it up again, because another bidder claims the bid, and offers to give more. Brashears vs. Barrabino and al. viii. 641.

43. If a deft. point out property to the sheriff as his, and buy it himself, he cannot afterwards obtain an injunction on the ground that it did not belong to him. Dubreuil vs. Soulie, jv. n. s. 91.

44. A sale by the sheriff of New-Orleans for the payment of taxes, is legal, if he pursue the same formalities which are prescribed for like sales in other parishes of the state. Livingston vs. Walden, iv. n. s. 456.

VI. NOTARIAL SALES.

45. A sale in a notary's office, is not a sale in market overt. Mitchell vs. Comyns, i. 133.

VII. SALES BY AUCTION.

46. A sale at auction of immoveable property will not be perfected until the signature of the auctioneer be affixed to the process verbal. *Jackson and al.* vs. *Williams*, xii. 334.

VIII. VENTE A REMERE.

47. A conditional sale followed by delivery, is a vente a remeré. Smoot and al. vs. Baldwin, i. n. s. 528.

IX. LESION.

48. The vendee cannot be disturbed on account of lesion in the sale by which his vendor acquired the land. Bradford's Heirs vs. Brown, xi. 217.

49. The first sale is not therefore void, and if the vendor wishes to avoid it he must bring suit. *Ibid. Ibid.*

X. ACTION OF RESCISSION.

50. A suit to setaside a sale, is well brought against the party who received the property. Guidry vs. Grivot, it n. s. 13.

51. When the defect of the thing sold is established, neither fraud nor warranty need be alleged. Brown and at vs. Duplantier, i. n. s. 312.

Vide Adjudication, 1, 2: Alienation, 1, 2, 3, 4, 5. Attorneys, 38. Auctioneer, 2. Bill of Sale. Carrier, 3. Constable. Contract, 24. Courts of Probates, 6, 7. Delivery. Dowry. Executor, 9. Lien. Prescription, 34. Purchaser. Redhibition. Renunciation. Seizure and Sale—order of. Nullity. Practice. Simulation. Slave. Title. Vendor and Vendee. Warranty. Written Contract.

SALVAGE.

1. The quantum of damages in cases of salvage, is left to the discretion of the court a quo; and the supreme court

will not disturb the judgment, when it does not appear that this discretion was improperly exercised. Chaveau vs, Walden, x. 100.

SATISFACTION.

1. If satisfaction be improperly entered, the legal remedy is by suit in the ordinary way. Kilgour vs. Ratcliff's Heirs, ii. n. s. 292.

SECURITY FOR GOOD BEHAVIOUR.

1. Security for good behaviour may be required of a libeller. Territory vs. Nugent, i. 103.

SEIZURE AND SALE-ORDER OF.

- 1. An order of seizure and sale may issue on an authentic act, written in the French language. *Tilghman* vs. *Dias*, 691.
- 2. If the plff's order of seizure and sale be rescinded improperly, he ought to have a statement of facts made: he cannot succeed in the supreme court upon a bill of exceptions to the opinion of the court below. Poydras vs. Robillard, iv. 174.

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- 3. An order of seizure cannot be obtained on the affidavit of the plff. that the money is unpaid; and of another person, that the endorsement of the note is in the hand writing of the original payee. If it should, the deft may have it set aside on shewing the irregularity, and without denying the plff's right to the money. Wray vs. Henry, x. 222.
- 4. In case of an illegal seizure, the officer and the party directing it, may be sued instantly. Shuff vs. Morgan and al. ix. 592.
- 5. A sous seing privé assignment of a mortgage, does not authorize the assignee to obtain at once, an order of seizure and sale. Gray vs. Baldwin, iv. n. s. 196.

Vide EXECUTION. SALE.

SEPARATION FROM BED AND BOARD.

- 1. A provision for the support of the wife during the contest, is not conditional on her success. Le Beau vs. Trudeau, i. n. s. 93.
- 2. A short absence from the residence assigned her, does not affect her claim to alimony. *Ibid. Ibid.*
- 3. In an action for a separation from bed and board, when adultery is at issue, witness cannot be asked, what the character of the wife was for chastity. *Trudeau* vs. *Trudeau*, i. n. s. 128.
- 4. Nor whether he thinks her general conduct was that of a virtuous woman. *Ibid. Ibid.*

Vide HUSBAND AND WIFE.

SEQUESTRATION.

1. Sequestered property, when there is a judgment of non-suit, is to be replaced in the hands of him from whom it was taken. Hasluck and al. vs. Morgan, ii. n. s. 9.

2. A writ of sequestration is not the proper remedy to compel the appearance of an absent debtor. Stockton and al. vs. Husluck and al. x. 472.

3. If A. buy goods for B. on his own note, and draw on B. who pays the draft, they cannot be arrested in the hands of B. on the failure of A. *Emmerson* vs. *Gray and Taylor*, iii. 697.

4. Sequestration creates no lien. Pitot and al. vs. Elmes and al. i. 79.

Vide BAILMENT, 2, 3, 4, 5.

SERVANTS.

1. A cook, hired for eighteen months, may be dismissed at any time. Bethmont vs. Davis, xi. 195.

2. If his master were bound to pay his passage back to France, his heirs may recover the price of the passage, though the cook die pending a suit brought therefor. *Ibid. Ibid.*

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SERVITUDES.

- 1. Although there be some buildings on a lot, the owner of the adjacent one may put one-half of the partition wall on his neighbour's lot. Larche vs. Jackson, ix. 724.
- 2. Servitudes are like incorporeal heriditaments, and do not pass without a grant. Orleans Navigation Co. vs. Mayor and al. of N. Orleans, ii. 214.

Vide HIGHWAY.

SET-OFF AND COMPENSATION.

- 1. Compensation must be specially pleaded. Robinson and al. vs. Williams, iii. n. s. 665.
- 2. A bona fide creditor of an insolvent may, when sued by the syndics, plead compensation of a debt due him before the failure. Boissier's Syndics vs. Belair and al. i. n. s. 481.
- 3. But he must prove the period when he became creditor by other evidence than that of the insolvent. Ibid. Ibid.
- 4. A deft. cannot be allowed as a set-off a payment made by him for the plff. without shewing that he made it at his request. Rogers' Heirs vs. Bynum, ix. 82.
- 5. A debt is liquidated so as to be susceptible of being set off, when it appears that something, and how much, is due. Carter and al. vs. Morse, viii. 398.
 - 6. A private debt cannot be set off against a partner-

ship claim. Ward vs. Brandt and al. Syndics. xi. 331. Thomas and al. vs. Elkins, iv. 376. Smith vs. Duncan and Jackson, i. 25.

7. If a suit be brought for the balance of an account, compensation need not be pleaded. Fram vs. Allen, iii. 381.

8. A deft's debt, offered as a set-off, will be allowed, even if the plff. does not establish his. Gilly and al. vs. Logan and al. ii. n. s. 196.

9. An assignee or endorser, plaintiff, must allow compensation of what he owes in his own right. Martin's Heirs vs. Overton, i. n. s. 584.

10. A trespasser cannot plead compensation nor reconvention. Innis vs. Ware, i. n. s. 556.

11. One owing a firm, cannot plead compensation of a debt due him by an individual member of said firm. Findley vs. Breedlove and al. iv. n. s 105.

12. If a tutor take a note in his own name for a debt due a minor, the tutor's own debt may be pleaded as a set-off against such note. Orry vs. Winter, iv. n. s. 277.

Vide Acts of Assembly, 5. Answer, 2. Checks. Curator, 3. Execution, 2. Partnership, 19. Practice, 92, 93. Reconvention. Also, Act of 16th Feb. 1825.

SHERIFF.

I. Sheriff.

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II. Sheriff's Return.

I. SHERIFF.

1. It is not a good defence against a sheriff's claim for

fees, that he did not reside in the state when the services charged for were rendered. Morgan vs. Mitchell, iii. n. s. 576.

2. Neither is it a good defence to his claim for fees. for clothing, sustenance and medical aid, furnished by him to slaves, that they were not kept in close custody. *Ibid. Ibid.*

3. When he is charged with a culpable breach of duty, the proof lies on the party making it, although it involve a negative. *Ibid. Ibid.*

4. If slaves be committed as felons and runaways, the sheriff cannot release them on their being discharged of the felony. *Ibid. Ibid.*

5. If he fail to advertise a runaway slave, he cannot recover the legal fees. *Ibid. Ibid.*

6. But he may recover the value of his services for taking care of them, if their detention was known to the owner, and he refused to take them away. *Ibid. Ibid.*

7. He cannot recover for the keeping of slaves, unless he shew the expenses incurred. Montegut vs. Dauphin, i. n. s. 258.

8. His bond should be deposited with the parish judge. State vs. Armstrong and al. i. n. s. 269.

9. If he die before receiving the proceeds of a sale on a f. fa. his representative cannot demand it. Pavie's Heirs vs. Cenas, iii. 387.

10. He must take on a fi. fa. the property pointed out; but he cannot take real estate when there is personal property. Morgan's Adm'r vs. Woorhies, iii. 462.

11. If he take real estate where there is personal property, and the plff. make no objections, the plff. cannot afterwards disown his act and charge him with the debt. *lbid. lbid.*

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12. A sheriff seizing property, on which a third person has a lien, is not suable as a trespasser. Kenner and al. vs. Morgan. iii. 209.

13. There is no summary relief provided by law against the sheriff who retains the plff's money. Riviere vs. Ross, ii. 46. Chew and Relf vs. Delogny, Idid. 114.

14. Whether a sheriff be entitled to commissions on an order of seizure, not followed by a sale? Hubbard and Hopkins vs. Baldwin and Blanchard, ii. 146.

15. A sheriff who wrongfully executes a process in one court, may be sued in another. Clark's Ex'rs vs. Morgan, iv. 79.

II. SHERIFF'S RETURN.

16. The sheriff may make his return after a contest in which its validity is attacked. Aubert vs. Buhler and al. iii. n. s. 489.

17. He may return a writ of execution after the return day.* Ibid. Ibid.

18. His return of the causes which prevent the sale of goods seized, will be taken as true if not disproved. Baldwin vs. Gordon and al. xii. 378.

19. A sheriff's return that he served the petition and citation, is evidence that he did so in both languages. Cox vs. Wells and al. iii. n. s. 158. Fleming vs. Conrad, xi. 301.

20. A sheriff may at any time perfect his return by signing it. Nichol vs. De Ende, iii. n. s. 310.

Vide ATTACHMENT, 15. SALE. SURETY. VENDOR AND VENDEE.

^{*} See Code of Practice, articles 697, 700. Also the act of the 7th April, 1826, on this subject.

SHIP'S EXPENSES.

1. The necessary expenses of a vessel coming into the bayou St. John, are not confined to the toll, but extend to all necessary disbursements on her return. Hyde and al. vs. Henry, iii. n. s. 179.

Vide Hypothecation

SHIP OWNERS.

1. The part owners of a steam boat are not liable in solido to the freighters. Carroll vs. Waters, ix. 500.

2. A freighter carrying off his goods, discharges the ship owners from all responsibility. Monro vs. Owners of Ship Baltic, i. 195.

3. A ship owner is liable for all damages occasioned by a master who is joint owner. St. Marc vs. La Chapella and Harrison, i. 36.

Vide CARRIER. HYPOTHECATION. JOINT OWNERSHIP.

SIGNATURE.

- 1. A signature need not be disowned on oath, but must be so done in writing.* Clark's Ex'rs vs. Cochran, iii. 353.
- * Art. 324, in the Code of Practice, reads thus: "When the demand is founded on an obligation, or an act under private signature, which is alleged to have been signed by the deft. such deft. shall be bound in his

SIMULATION.

- 1. A party to a sale cannot prove its simulation by parol. Brocade vs. Camp's Curator, i. n. s. 454 Delery vs. Bunle's Undertutor, Ibid. 451. Copelle, Curator vs. Dalton, iv. n. s. 123.
- 2. A feigned vendee will be decreed to reconvey, even when the object of, the sale was to protect property from threatened suits. Griffin's Ex'r vs. Lopez, v. 145.

Vide SALE. CONTRACT.

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SLANDER.

- 1. In an action of slander, it is sufficient to prove the substance of the words charged. Freeland vs. Lanfear, ii. n. s. 257.
- 2. But a charge that the deft. falsely accused the plff. of having robbed him of his tobacco, is not supported by a declaration of its being dishonestly obtained. *Ibid. Ibid.*

answer to acknowledge expressly, or to deny his signature." Art. 326, says—"The deft. whose signature shall have been proven, after his having denied it, shall be barred from every other defence, and judgment shall be given against him without further proceedings." See also new Civil Code, articles 2240, 2241.

SLANDER OF TITLE.

1. A person who slanders the title of another, may be compelled to bring suit to prove the truth of what he has said. Livingston vs. Heerman, ix. 656.

2. If in answer to a petition, a deft. set up his title, and the parties go to trial on the merits, the proceedings will not be set aside on the ground, that nothing could be inquired into but the question, whether the deft. was bound to make his declaration good by an action. *Ibid. Ibid.*

3. In such a case, the deft. is actor, and the onus probandi lies on him. Ibid. Ibid.

4. It is not necessary to enable the court to decide on the title, that the plff. should have prayed to be put in possession. *Ibid. Ibid.*

Vide TITLE.

SLAVE.

1. In a suit for killing a slave, presumptive evidence supports the verdict. Crawford vs. Cheney, iii. n. s. 142.

2. The bona fide purchaser of a stolen slave, cannot compel the owner to restore the price, in an action for the recovery of such slave. Harper vs. Destrehan, ii. n. s. 389.

3. The sale of a slave out of the state, need not be recorded in it. Smoot and al. vs. Baldwin, i. n. s. 528.

4. Delivery of a slave takes place by the delivery of a title in which it is stated that he had been delivered. Ib. Ib.

5. It is no defence to a suit on that part of the black code which forbids the sale of spirituous liquors to slaves, that the deft. did not know the negro to be a slave. Delery vs. Mornet, xi. 4.

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6. If a slave of a bad character, pursued on suspicion of felony, attempt to seize a gun, fly, and be killed in the pursuit, the supreme court will not disturb a verdict for the deft. who killed him. Allain vs. Young, ix. 221.

7. If a slave procure his discharge by a habeas corpus, his master is not thereby precluded from establishing his right to him. Bazzi vs. Rose and her child, viii. 149.

8. A master may sue for what is due to his slave. Liv-audais' Heirs vs. Fon and al. viii. 161.

9. A slave who has a deed of emancipation under which she is to be set free at the death of the grantor, is in a statu liberi, and children born from her in the mean while, are slaves.* Catin vs. D'Orgenoy's Heirs, viii. 218.

10. If he who takes up a runaway slave, keep him four or five days in irons, send immediate word to the owner, offering to purchase him, who enters into a treaty therefor, and in the mean time the slaves escape; the supreme court will not disturb a verdict in favor of the deft. Palfrey vs. Rivas, vii. 371.

11. A slave who enjoyed her freedom in Hispaniola, during the revolution there, may reckon from that time in establishing her title thereto by prescription. *Metayer* vs. *Metayer*, vi. 16.

12. The marriage of a slave before emancipation, with

^{*} By article 196, of the new Civil Code, children born under such circumstances, become free at the time fixed for the emancipation of the mother, whether she be alive at such time or not.

the consent of his master, gives him civil rights on his emancipation. Girod vs. Lewis, vi. 559.

13. What is evidence of the habit of running away in a slave? Andry and al. vs. Foy, vii. 43. Macarty vs. Bugnieres, i. 149.

14. If a slave sold, remain with the vendor, he is liable to be seized for his debts. Pierce vs. Curtis and al. vi. 418.

15. A slave does not become free, on his being illegally imported into the state. Gomez vs. Bonneval, vi. 656.

16. A slave may sue persons other than her master to obtain her freedom. Marie vs. Avart, vi. 731.

17. If on an injury to a slave, a plff. recover his full value, the property in him is transferred to the deft. on payment of the judgment. Jourdan vs. Patton, v. 615.

18. No interest can be given on such a price; but the damage sustained by the plff. by the delay, may be considered in fixing the value. *Ibid. Ibid.*

19. A negro will be presumed to be free, when purchased as a slave in a country in which slavery is not tolerated, unless he be proven to have been before in one in which it is. Forsyth and al. vs. Nash, iv. 385.

20. When a person who claims the deft. as a slave, and proves him to be so, the slave cannot again contest the plff's title. Trudeau's Ex'r. vs. Robinette, iv. 577.

21. If the deft. deceitfully obtain possession of a slave of the plff's, and afterwards have an execution levied on him, and purchase him, the only measure of damages will be the hire till the seizure. Williams vs. Raby, iii. n. s. 703.

22. If a slave be wrongfully detained, wages will be allowed from the date of the citation. Campbell vs. Armstrong, i. n. s. 574.

23. Whether a slave directed to be set free at a cer-

tain period by will, can have the intervention of a magistrate to prevent his removal out of the state in the mean time?* Moosa vs. Allain, iv. n. s. 99.

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Vide Attorneys, 38. Bailment, 9. Coloured Persons. Contract, 10. Donation. Dowry. Emancipation. Evidence, 39, 140. Prescription, 22, 28. Redhibition. Sheriff. Warranty.

SOLIDARITY.

1. Solidarity is never presumed. Dean, for the use of Vineyard vs. Smith and al. xii. 316. Slocum vs. Sibley, v. 682. Vide Practice, 67.

SPANIARD.

1. A Spaniard has no right to sue a Frenchman here, whose property was confiscated by the Spanish government, and made liable to pay Spanish debts, until he shall have resorted to the mode pointed out by his government for the recovery of them. Debord vs. Coffin and Wife, i. 40.

^{*} See the act of the 22d March, 1826, which prevents their introduction into the state for sale.

SPECIAL FACTS.

1. If on special facts the jury find matter of law, it will be disregarded.* Barry vs. Louisiana Ins. Co. i. n. s. 70. Center vs. Stockton and al. vii. 208. Livingston vs. Heerman, ix. 713.

Vide Supreme Court. Evidence, 157. Practice, 118 to 124.

STATEMENT OF FACTS.

- 1. The statement of facts by the judge, is presumed to be made in consequence of the parties having disagreed. Gayoso De Lemos vs. Garcia, i. n. s. 324.
- 2. A statement of facts without a date, made "as well as is recollected," and mentioning that "other facts were proven, which the judge deemed unimportant," is not good. Ship and al. vs. Cuny and al. ix. 91.
- 3. A statement of facts must be signed by both parties, or some one thereto authorized by them, unless it be made by the judge. Dubreuil vs. Dubreuil, v. 81.
- 4. A statement of facts may consist of the detail of the evidence. Abat vs. Doliolle, iv. 316.
- 5. It may be made at any time before judgment be actually signed. Brand vs. Livaudais and al. iii. 389. Syndics of Hellis vs. Aselvo, Ibid. 201.

^{*} The law permitting parties to submit special facts to a jury, is abolished. See Code of Practice, articles 519, 520.

6. And by consent it may be made after. Youm vs. Roy, iii. 397.

Vide SUPREME COURT.

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STATUTES.

1. An affirmative statute containing provisions different from, but not contrary to a former one, does not repeal it. Segher's Attorney for Absent Heirs vs. Antheman, Ex'r of Andre, f. w. c. i. n. s. 73.

2. When the English and French part of a statute differ, if the expressions in the former be clear and unambiguous, the latter is to be disregarded. Breedlove and al. vs. Turner, ix. 353.

3. But if the meaning of the legislature be left uncertain, the latter may be resorted to to clear the doubt. *Ibid.*Vide Acts of Assembly. Laws.

STIPULATION.

1. A stipulation avails an absent person, in whose favour it is made. Smith vs. Kemper, iv. 409.

Vide CONTRACT.

SUBROGATION.

1. A partner who pays partnership debts, is subrogated to the creditor's rights on the joint property. Rowlett vs. Grieves' Syndics, viii. 483.

2. A surety who pays the debt, is ipso facto subrogated to the rights of the creditors. Curtis vs. Kitchen, viii. 706.

Vide BILLS OF EXCHANGE AND PROMISSORY NOTES, 69.

SUCCESSIONS.

1. An estate cannot be proceeded against till there be an heir, who accepts, or a curator appointed. Randal's Widow and Heirs vs. Baldwin and al. iv. 456.

Vide VACANT ESTATE.

SUBSTITUTION.

1. Under a general power, the attorney has a right to substitute. Heirs of Dubreuil f. p. c. vs. Rouzan, i. n. s. 158.

2. A devise to the mother, remainder to the children in equal parts, to be held for the survivor down to the last, or in case of death before marriage, or without issue; is a substitution which the law reprobates. Farrar and al. vs. M'Cutcheon and al. iv. n. s. 45.

SURETY.

I. Surety generally.

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- II. Surety on Appeal.
- III. Auctioneer's Surcties.
- IV. Sheriff's Sureties.

I. SURETY GENERALLY.

- 1. The surety on a note cannot claim the benefit of the law in relation to endorsees. Guidry vs. Vives, iii. n. s. 659. Cooley vs. Lawrence, iv. 639.
- 2. If a suit be brought against a principal and his sureties, and he (the principal) fail in the mean time, judgment may be taken against his sureties. Kuhn and al. vs. Abat and al. ii. n. s. 168.
- 3. A surety bound in solido, cannot claim the benefit of discussion. Thibodeau vs. Patin, i. n. s. 478.
- 4. A change of surety may be ordered by the court to enable the person bound to testify. Butler vs. De Hart, i. n. s. 184.
- 5. Service of a judgment on the surety, who bound himself for the forthcoming of a negro or his value, on the judgment, does not work a forfeiture of the penalty, notwithstanding a demand, if the negro be surrendered in a reasonable time. Hunter's Syndics vs. Hunter and al. xii. 1 and 5.
- 6. A surety claiming discussion must point out property, and furnish money to carry it into effect. Baldwin vs. Gordon and al. xii. 378. Herries vs. Canfield and al. ix. 385.
 - 7. Sureties are entitled to oppose all exceptions, which

are inherent in the debt—not those which are personal to the debtor. Baldwin vs. Gordon and al. xii. 378.

- 8. A surety who does not bind himself in solido with another surety, is only liable for one-half of the debt. Filhiol vs. Jones and al. viii. 635.
- 9. The surety on a custom-house bond, is bound to reimburse his part to the co-surety who has paid the whole, although the goods were delivered to and sold by the latter. Lloyd and al. vs. Martin, vii. 444.
- 10. When a surety is sued with his principal, he cannot avail himself of an appeal, taken by the latter: his not appealing is a waiver of his right of discussion. Calvit vs. Haynes and al. viii. 712.
- 11. A surety may be sued without the principal. Curtis vs. Martin, v. 674.
- 12. The surety in an attachment bond is bound, though at the time of its execution, no such bond could have been legally demandable. Lartigue vs. Baldwin, v. 193.
- 13. In whatever manner one appears to have bound himself, he shall be bound. *Ibid. Ibid.* 194. *Claiborne* vs. *Debon and al.* iii. 565. *Morgan* vs. *Furst and al.* iv. n. s. 117.
- 14. A joint suit may be brought against a principal and surety. Bernard and at. vs. Curtis and at. iv. 214.
- 15. The surety of a vendee on a fi. fa. has not the benefit of the plea of discussion. Morgan vs. Young and al. v. 364.
- 16. A person bound under an order of court to give security, must give persons residing within the state. Potter vs. Richardson, i. n. s. 276.
- 17. The surety who pays for the principal is not entitled to take out execution in the name of the creditor. Gray vs. Baldwin, iv. n. s. 196.

II. SURETY ON APPEAL.

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18. The surety on an appeal bond is liable, although no execution issued, nor any demand was made of his principal. Bryan vs. Cox, iii. n. s. 574.

19. Possession of property to the amount of \$400, does not authorize the possessor to be surety for \$600 on an appeal. Lafon vs. Testamentary Ex'rs of Lafon, ii. n. s. 571.

20. The surety on an appeal bond is not discharged by a judgment directing a mortgage, and reviving his judgment against the appellant's heirs. Cox vs. Mulhollan, i. n. s. 564.

21. The surety on an appeal bond is not discharged by a judgment, directing all the property of the principal debtor to be sold, and the amount distributed among his creditors. Baldwin vs. Gordon and al. xii. 378. Denis vs. Veazey, Ibid. 82.

22. An obligor or surety on an appeal bond is not entitled to the plea of discussion. Denis vs. Veazey, xii. 79.

23. The surety on an appeal bond, when the appeal is not successfully prosecuted, cannot contest the claim of the plff. or owner of the land liquidated by a judgment, unless it be on a suggestion of collusion and fraud to cheat him by the parties to the original suit. *Ibid. Ibid.*

24. The surety on an appeal bond, when the principal has failed, is liable to pay without an execution having been issued against the latter. Delazerry vs. Blanque's Syndics, vi. 560.

25. A husband may be surety for his wife on an appeal. Shiff and al. vs. Wilson, iii. n. s. 91.

III. AUCTIONEER'S SURETIES.

26. An auctioneer's sureties are liable for goods sold by him and his partner. Kuhn and al. vs. Abat and al. ii. n. s. 168.

27. The surety in a bond, in which it is stated that the principal has been appointed auctioneer, is estopped from denying that he was one. Duchamp and al. vs. Nicholson, ii. n. s. 672.

28. The sureties of an auctioneer are bound for the payment of the amount of goods sold after the date of the bond, though they were delivered to him before its execution. *Ibid. Ibid.*

29. The sureties of an auctioneer are not liable, if goods in his hands, on which he had a lien on the termination of his office, are afterwards sold under a new commission, and he fail to account for the proceeds. Claiborne vs. Debon and at. iv. 534.

30. A bond given by an auctioneer, instead of a recognizance, is valid. Cluiborne vs. Debon and al. iii. 565.

IV. SHERIFF'S SURETIES.

31. The certificate of a parish judge, that a sheriff's bond has been executed with the consent of the justices, is evidence that they approved of the sureties. Whitehurst vs. Hickey and al. iii. n. s. 589.

32. And they are bound by it, although it be not recorded. *Ibid. Ibid.*

Vide Assignment, 9. Attachment, 15. Bonds, 2, 3, 14, 15, 18. Bills of Exchange and Promissory Notes, 11, 91, 92. Curator, 16. Discussion, 1. Executor, 2. Husband

AND WIFE, 9. MARSHAL OF THE UNITED STATES. MINORS. PRACTICE, 67. SECURITY FOR GOOD BEHAVIOUR. SUBROGATION. SOLIDARITY. RESPONSIBILITY.

SURRENDER.

- I. Voluntary Surrender.
- II. Forced Surrender.

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I. VOLUNTARY SURRENDER.

- 1. The act of 1817, has not repealed the former laws relative to the voluntary surrender. Kelsey vs. His Creditors, ii. n. s. 36.
- 2. It introduces a cumulative remedy, from which certain insolvents are excluded. *Ibid. Ibid. Shreve* vs. *His Creditors*, xi. 30.
- 3. The vuluntary surrender is, whenever the application for a relief comes from the debtor. Ward vs. Brandt and al. ix. 625.

II. FORCED SURRENDER.

- 4. A forced surrender of the estate of a deceased person cannot be ordered: it must be administered by the court of probates. Dupey and al. vs. Greffin's Ex'r, i. n. s. 198. Vignaud vs. Tonnacourt's Curator, xii. 229.
- 5. A forced surrender cannot be ordered, without hearing the debtor. Guirot vs. Her Creditors, xii. 654. Weimprender's Syndics vs. Weimprender and al. xi. 17.
 - 6. After proceedings commenced for a forced surrender,

an individual creditor cannot carry on a suit against the debtor. Mayhew vs. M'Gee, xii. 666. Chiapella vs. Lanusse's Syndics, x. 448.

- 7. A suit for a forced surrender cannot be carried on, unless the party alleged to be insolvent, be made a deft. Weimprender's Syndics vs. Weimprender and al. xi. 17.
- 8. A suit for a forced surrender is not a proceeding in rem. Ibid. Ibid.
- 9. A forced surrender cannot be obtained on the oath of the applicant alone. Wikoff and al. vs. Duncan's Heirs, x. 667. Ward vs. Brandt and al. ix. 625.
- 10. The act of 1817, directing the proceedings to be had in cases of voluntary surrender, does not govern those which are forced. Planters' Bank and al. vs. Lanusse and al. x. 690.
- 11. In all cases of forced surrenders, all the creditors are at once plffs. and defts. *Ibid. Ibid.*
- 12. A debtor obtaining a respite, and not complying with conditions, may be compelled to a forced surrender. Ward vs. Brandt and al. x. 641.
- 13. A forced surrender is that which is ordered at the instance of the creditors of an insolvent. Same vs. Same, ix. 625.
- 14. A forced surrender may be ordered in all cases when the insolvent being a merchant or trader, is in failing circumstances.* *Ibid. Ibid.*

Vide Cessio Bonorum. Insolvent. Respite. Bankruptcy.

^{*} By an Act of the 24th March, 1823, the Spanish laws on the subject of forced surrenders, were repealed. Quere, whether they have not been revived by the new Civil Code, art. 2168?

SYNDICS.

- I. Nomination of Syndics.
- II. Syndics generally.

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I. NOMINATION OF SYNDICS.

- 1. A creditor may oppose the election of a syndic who is not a creditor. Clamageran vs. Degruy, ii. n. s. 156. Enet vs. His Creditors, iv. 307.
- 2. The wife of an insolvent may vote for the nomination of syndics, although she has not renounced the community. Planters' Bank and al. vs. Lanusse and al. xii. 157.
- 3. Syndics must be appointed by the majority of the creditors in amount; and if the claim of those offering to vote be disputed, it must be proved as in ordinary cases, by legal evidence. Planters' Bank and al. vs. Lanusse and al. x. 690. Enet vs. His Creditors, iv. 307.
- 4. An endorser, who has not paid his endorsee, cannot be permitted to vote at the deliberation of the creditors for the appointment of syndics. Planters' Bank and al. vs. Lanusse and al. x. 690.
- 5. The ten days allowed for filing an opposition to the appointment of a syndic, run from the closing of the proceedings before the notary. Dreux vs. His Creditors, ii. n. s. 57.
- 6. The choice of syndics is to be made from among the creditors, unless they all agree to the contrary. Enet vs. His Creditors, iv. 307.
- 7. Privileged creditors are entitled to vote for syndics. Ibid. 599.

8. The insolvent may be appointed syndic. Turcas and al. vs. Leglise, iv. n. s. 462.

II. SYNDICS GENERALLY.

9. In a suit against syndics to be placed on the tableau, there is no necessity of an amicable demand. Marigny vs. Johnston's Syndics, iii. n. s. 551.

10. A judgment, reversing another by which a syndic was appointed, does not vitiate what he did in the mean while. Saulet vs. Dreux's Syndics, iii. n. s. 615. Freret vs. Same, iv. n. s. 76. Pilie vs. Same, iv. n. s. 75.

11. Any of the creditors may compel a syndic to produce his bank book. Bargebur and al. vs. Their Creditors, ii. n. s. 526.

12. Syndics have not the right of receiving the whole proceeds of the sale of a chattel, of which the insolvent was only part owner. Canez and al. vs. Schr. Jas. M'Kinley and al. ii. n. s. 307.

13. The syndic of an insolvent cannot make acknowledgments, which will avail a firm of which he is a member. Walton vs. Watson and al. i. n. s. 347.

14. A syndic who becomes insolvent may be removed, and another appointed in his stead. Seghers vs. His Creditors, i. n. s. 453.

15. The homologation of a tableau of distribution puts an end to the legal functions of syndics. Bernard vs. Vignaud, i. n. s. 1.

16. A syndic cannot sue his co-syndics for funds of the estate in the hands of the latter. Preval vs. Moulon, xi. 530.

17. Provisional syndics do not possess the faculty of demanding or resisting payment. Chiapella vs. Lanusse's Syndics, x. 455.

18. On a rule on syndics to produce their bank book, &c. service ought to be made on each syndic. Canfield and al. vs. Walton's Syndics, ix. 189.

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19. After filing the tableau of distribution by the syndics of the creditors of an insolvent, a notice to all the creditors is an indispensable formality. Williamson and al. vs. Their Creditors, vi. 431.

20. Syndics cannot proceed until their appointment be homologated. Dukeylus' Syndics vs. Dumontel and al. iv. 466.

21. Syndics become personally liable by their misconduct only. Seghers vs. Visinier and al. iv. 30.

22. Syndics are entitled to the property in the possession of their debtor, who acted at times for himself, and at others as agent, unless the principal prove his property. Barker vs. Connellin's Syndics, iv. 177.

23. Syndics can only become creditors of an estate by paying its debts. Syndics of Williamson vs. Syndics of Phillips, iii. 205.

24. Syndics cannot take possession of an estate, on the ground that the vendee obtained it fraudulently from their insolvent. St. Avid and al. vs. Weimprender's Syndics, ix. 648.

25. On a rule to shew cause why syndics should not pay a sum claimed, they may demand that the facts they suggest in opposition thereto be tried by a jury. *Meeker's Assignees* vs. *Williamson and al. Syndics*, vii. 315.

26. After insolvency the syndics may sue for any property, the alienation of which was null and void as to creditors. Martinez vs. Layton & Co. iv. n. s. 368.

27. But when the object of the action is to enforce a lien, which one of the creditors may have on immoveables alienated before failure, they cannot. *Ibid. Ibid.*

Vide Constitutional Law, 8. CREDITORS. MORTGAGES. INSOLVENT.

TAXES.

I. Taxes.

II. Taxes on Suits.

I. TAXES.

1. The treasurer of the state may withhold from a person to whom the legislature has made an allowance, the amount of his taxes, for which he has been reported a defaulter, although the same may have been seized in his hands by the sheriff. Flower and al. vs. Arnaud. iv. n. s. 73.

H. TAXES ON SUITS.

- 2. The tax on suits is not to be advanced by the plff. or his attorney. Moreau vs. Duncan, ii. 47.
- 3. The two dollars, tax fee, imposed on suits brought in the parish court of New-Ofleans, ceased to be recoverable after the act of 1813. Parish of N. Orleans vs. Kennedy, iv. n. s. 511.

Vide Attorneys, 18. Costs, 5. Advertisement. Constitutional Law. Police Jury.

TERRITORY OF ORLEANS.

1. Congress has power to govern the territories of the United States, and to establish territorial legislatures therein. State vs. N. Orleans Navigation Co. xi. 309.

2. Montesano is within the territory of Orleans. New-combe vs. Skipwith, i. 151.

TESTAMENT.

1. An heir may avail himself of the insanity of his testator, although his interdiction was not provoked. *Marie* vs. *Avart's Heirs*, x. 25.

Vide PRESCRIPTION, 25. SUBSTITUTION. WILL.

TESTIMONY.

Vide EVIDENCE.

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THIRD PARTY.

- 1. A third party is he who did not intervene in the act, by which his interest in the thing conveyed is affected. Morrison and al. vs. Trudeau, i. n. s. 384.
- 2. A third possessor cannot question the correctness of the evidence on which judgment was given against the principal debtor; and the creditor is not bound to produce it. Bernard vs. Vignaud, i. n. s. 1.
- 3. But a third possessor may shew that the judgment is void, for want of proper parties. *Ibid. Ibid.*

4. If a vendor direct payment to a third person, such person may sue without the vendor. Clark's Ex'rs and al. vs. Farrar, iii. 247.

Vide Acts, 3, 4. Bank Checks, 3. Contract, 15. Discussion, 2. Disturbance. Evidence, 150. Lien. Mortgages. Sale. Sheriff.

TITLE.

- 1. A deft. cannot attack the title under which he claims. Crane and al. vs. Marshal, i. n. s. 577.
- 2. A deft. who appears not to have been ignorant of his want of title, may be decreed to pay wages, even before the demand. *Mulhollon* vs. *Johnson*, i. n. s. 579.
- 3. If a deft. possess under a title which proves deficient, and which may reasonably be believed to have been valid, he ought not to be considered as a knavish possessor. *Richardson* vs. *Packwood*, i. n. s. 290.
- 4. A title calling for objects on both sides of a stream, must be laid out so as to include them all. Holstein, vs. Henderson, xii. 319.
- 5. A. having discovered that B. had sold him land to which he had no title, gave notice that he would not pay, but require a rescission—B. having procured a title previous to the service of the citation, held that he was protected thereby. Bonin and al. vs. Eyssaline, xii. 185.
- 6. An individual, put in possession by the Spanish government, under metes and bounds, of a part of the king's land, acquired such a title, which strengthened by long

possession, must prevail. Sanchez and Wife vs. Gonzales, xi. 207.

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y-'s 7. A just title is that which is of a nature to transfer the property; so that if it be not transferred, it is owing to a want of right in the grantor. Dufour vs. Camfranc, xi. 675.

8. If there be two titles of equal dignity for the same tract of land, that which is anterior in date will prevail. Calvit vs. Innis, x. 288.

9. A commissioner's certificate is no evidence of title against a claimant under title or possession. Carmichael vs. Brisber, viii. 727.

10. The vendee of a claimant who has obtained the commissioner's certificate, cannot be disturbed by another claimant, on the ground that the vendor of the latter had a right of pre-emption. Tippet and al vs. Everston, viii 719.

11. A title from a person who stole the property from the plff. and brought it into this state, is worse than none, and can furnish no defence against the claims of the honest possessor. M'Grew vs. Browder, ii. n. s. 21.

12. He in whom a legal title is vested, has a right to sue. Finley vs. Breedlove and al. iv. n. s. 105.

13. An endorsement on the back of a title, which remains in the possession of the endorser, does not transfer the property to the endorsee. Herriot and al. vs. Broussard, iv. n. s. 260.

14. Mere possession of a slave is not evidence of title. Williams and al. vs. Horton, Curator, iv. n. s. 469.

Vide Fraud, 12, 13. Heir, 4. Patents. Sale. Slander of Title. Purchaser. Practice. United States. Riparious Estate.

TOLL

1. A vessel of the United States, cannot be seized for non-payment of toll. Orleans Navigation Co. vs. Schr. Amelia, vii. 632.

TORT.

1. Tortious acts, without injury to another, do not give rise to an action. Innis vs. Crummin, i. n. s. 560.

Vide WARRANTY, 11. NEW TRIAL, 6.

TRESPASS.

1. A justice and constable who proceed in an execution after a prohibition, and a person who aids the latter, are trespassers. Sere vs. Armitage and al. ix. 394.

2. A void authority will not justify a trespass, although the party acting under it does so in good faith. *Ibid. Ibid. Vide* Prescription, 39. Sheriff. Witness.

TRUSTEE.

1. A trustee has a privilege on the trust estate. Syndies of Bermudez vs. Ibanez and Milne, iii. 17.

TUTOR.

- 1. A testamentary tutor, after accepting, cannot discharge himself from his responsibility by neglecting to comply with the formalities created for the protection of the minor. Bernard and al. vs. Vignaud, i. n. s. 52. Same vs. Same, viii. 442.
- 2. The provision of law which requires that the tutor's account be rendered before the judge, is clearly introduced for the advantage of the minor, and no other person can have an interest in it. Jarreau vs. Ludeling, xii. 106.
- 3. A natural tutor retains the tutorship, though he remove out of the state with his ward. *Delacroix* vs. *Boisblanc*, iv. 715.
- 4. A tutor cannot make a compromise respecting the immoveable property of a minor, without a judicial decree which sanctions it. Chesneau's Heirs vs. Sadler, x. 726.

Vide MINORS. SET-OFF AND COMPENSATION.

UNITED STATES.

- 1. The United States have no lien for their debts, but a right of priority of payment out of the funds in the hands of the representatives of their insolvent debtors. Jackson vs. Oddie, ii. n. s. 555.
- 2. They are not preferred in such case to a mortgage creditor. United States and al. vs. Hawkins' Heirs, iv. n. s. 317.

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- '3. Officers of the United States are not foreign officers. Herriot and al. vs. Broussard, iv. n. s. 260.
- 4. Their receipts for the payment of land, under the pre-emption laws, are evidence of title. Ibid. Ibid.
- 5. Their certificates, under seal or sign manual, give faith and credit to instruments issued by them in their official capacity. *Ibid. Ibid.*

Vide Bonds, 28. Toll.

USURY.

- 1. If more than lawful interest be stipulated for, the principal alone can be recovered. Herman vs. Sprigg, iii. n. s. 190.
- 2. The borrower in such a case is not bound to pay any interest. *Ibid. Ibid.*
- 3. Usury may be committed by taking lawful interest on a greater sum than that which is lent. Flood and al. vs. Shaumburgh, iii. n. s. 622.
- 4. If the services of a slave, given for the use of money, exceed in value the highest rate of conventional interest, the contract will be usurious. Galloway vs. Legan, iv. n. s. 167.

Vide INTEREST.

VACANT ESTATE.

1. He who opposes the appointment of a curator, may

shew that the applicant is not domiciliated in the state, and possesses no property therein; that he the applicant is a resident, possesses property in the state, is a larger creditor of the estate, and was an old friend of the deceased. Rust vs. Randolph, iv. 370.

2. If a person who dies abroad, has property in Louisiana, and his heirs live out of its limits, the succession is a vacant one, and a curator should be appointed for it. Brown and al. vs. Richardsons, i. n. s. 208. M'Kenzie vs. Havards xii. 106.

Vide Successions.

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VENDOR AND VENDEE.

1. The vendee cannot withhold the price on the ground that the premises belonged to a minor, and were sold without a compliance with the legal formalities. Herriman vs. Mulhollan, i. n. s. 605. Melançon's Heirs vs. Duhamel, x. 225.

2. The vendee on a fi. fa. is suable before any recourse be had against the land sold and mortgaged. Morgan vs. Young and al. v. 364.

3. If a vendor, cited in warranty, admit that he transferred and delivered, but that he also has a just and legal title; he does not thereby admit title in his vendee. Calvit vs. Compton and al. iii. n. s. 86.

4. The acknowledgments of a vendor in the bill of sale, are evidence against a subsequent vendee. Martin vs. Curtis and al. iii. n. s. 105.

5. If the vendor promise after the sale to send the thing sold on board a vessel, and it be lost on the way through the neglect of his clerk, the vendee may withhold the price. Lincoln and al. vs. Visoso, iii. n.s. 325.

6. The vendee of a judgment debt may resist payment; if the suit had not ripened into a judgment at the time of

the sale. Henderson vs. Griffin, iii. n. s. 403.

7. A vendee is not disturbed by the recovery of an adverse claimant in a suit to which he is not a party. Exnicios vs. Weiss, iii. n. s. 480.

- 8. If the vendee promise to pay the price to the vendor of his vendor, he cannot delay the suit of the first vendor till he obtain judgment against his immediate vendor on an alleged deficiency of quantity. Desblieux vs. Darbonneaux, ii. n. s. 215.
- 9. Whether the vendee may recover lands, which the vendor before the sale swore to belong to the person in possession? Davis vs. Prevost's Heirs, i. n. s. 650. Same vs. Same, xii. 445.
- 10. When property is sold by certain bounds, and per aversionem, if there be a surplus over the quantity mentioned, it passes to the vendee. Innis vs. M'Crummin, xii. 425.
- 11. Proof cannot be received of the insanity of a vendor, whose interdiction was not asked for. Daunoy vs. Clyma and al. xi. 557.
- 12. A vendor cannot have an order of seizure after the failure of the vendee: he must be paid by the syndics. Chiapella vs. Lanusse's Syndics, x. 448. Williamson and al. vs. Their Creditors, v. 620.
- 13. If cotton be sold, for which payment is to be made in two days, and the vendee instantly procure advances

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thereon, delivering it to the lender who slaps it in his own name, the vendor cannot claim it, without refunding the sum loaned and charges. Erwin and al. vs. Torrey. Rogers and al. vs. Same, viii. 90.

14. A vendor who has not delivered the goods, cannot maintain an action for the price. Robinson vs. Jones and al. viii. 15.

15. If the vendee refuse to take away the goods, the vendor may sell them on account of the former, after proper notice. Gilly and al. vs. Henry, viii. 402.

16. A vendor ought to declare the defects which a thing has, when he knows them: it does not suffice that the bill of sale express that the vendee has visited and seen it.—

Rouzel vs. M'Farland, viii. 704.

17. A vendee of real property, though liable to an action of mortgage, is personally liable on his promise.—

Durnford vs. Jackson and al. viii. 59.

18. A vendee cannot refuse payment of the price, nor can he require surety from the vendor, till suit be actually brought to evict him. Fulton's Heirs vs. Griswold, vii. 223. Gardere vs. Foucher and al. iv. n. s. 352.

19. If the vendor point out a vacant lot for sale, telling the vendee it has two hundred feet in front, and it turns out that the space shewn consists of the lot and a space of thirty feet adjoining in front, belonging to another person, the error of the vendee, who believed that the 200 feet included the 30, does not vitiate the contract. Wikoff vs. Townsend and al. vii. 451.

20. A vendor's privilege is postponed till after the payment of all charges, in cases of insolvency. Delor vs. Montegut's Syndics, v. 468.

21. If one purchase a crop of sugar after viewing it, he

cannot claim any abatement on an allegation of its being of an inferior quality. Decuir vs. Packwood, v. 300.

- 22. If a vendee be restrained from aliening, without binding his vendee to the payment of the original vendor, and he so bind him, he remains liable, and is not released by the acceptance of interest from his own vendee by his vendor, nor by the latter suing the last vendee. Mayor and al. vs. Duplessis, v. 309.
- 23. A vendee may avail himself of any parol evidence, introduced by the vendor to shew that the sale was simulated, though he could not have introduced it himself. Berthole vs. Mace, v. 576.
- 24. One cannot be charged with goods on the testimony of a witness who was present when they were contracted for, though not at their delivery. Davis vs. Turnbull and al. vii. 228.
- 25. A vendee cannot resist payment, on the ground that there are other persons who have titles to the land sold him. Wrinkle vs. Tyler, iii. n. s. 111.
- 26. The acts of the vendor after the sale, and his declarations, as part rerum gestarum, are neither of them evidence of fraud in the vendee. Martin vs. Reeves and al. iii. n. s. 22.
- 27. A vendee may recover against his warrantor, without returning the slave purchased, if he be a runaway. Castellano vs. Peillon, ii. n. s. 466.
- 28. If a sheriff sell a runaway slave, without fulfilling the formalities which the law requires, and in consequence the negro be recovered from his vendee, the latter may recover damages therefor from such sheriff. Fleming and al. vs. Lockart, x. 398.
 - 29. The vendee's right to sue his warranty, is complete

the moment his own vendee is evicted. Simmins, f. m. c. vs. Parker, iv. n. s. 200.

30. It is not necessary to the completion of a contract between vendor and vendee, that the articles sold should be weighed in the presence of the latter. Hill vs. Morgan, iv. n. s. 475.

31. The right of the vendor to claim back the thing sold within eight days, can only be exercised when it remains in the possession of the vendee. *Ibid. Ibid.*

Vide DISTURBANCE. EXCEPTIONS, 3. LEASE. PRESCRIPTION, .11, 15. PRIVILEGE, 3, 6, 8, 10. QUANTI MINORIS ACTION. RIPARIOUS ESTATE. SALE. SLAVE. THIRD PARTY. TITLE. PURCHASER. CONTRACT. WARRANTY. WITNESS.

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WAGES.

- 1. One who on his father's death takes home a destitute younger brother, and employs him on his farm, is not necessarily bound to pay him wages. Smith vs. Smith, x. 400.
- 2. Circumstances however may entitle the latter to them. Ibid. Ibid.
- 3. Wages cannot be claimed by the master of a vessel, lost by his neglect. Latham vs. West, v. 573.

WAR.

1. The march of the French troops into Spain in 1823, was an act of war by France against Spain. Poutz vs. Louisiana State Ins. Co. iv. n. s. 80.

Vide Constitutional Law, 6.

WARRANTY.

1. The first vendor may be sued on his warranty by his immediate vendee, on the latter's vendee being evicted. Goodwin vs. Heirs of Chesneau, iii. n. s. 409.

2. Unless the first vendee alienate without warranty. Ibid. Ibid.

3. Although the claim of warranty relate to a defective title, it is not to be presumed that the parties to a sale intended there should be no warranty as to redhibitory defects. Castellano vs. Peillon, ii. n. s. 466.

4. A vendor is affected by a judgment against his vendee; and on the production of it, is bound to make good his warranty, unless he can shew that it was obtained by fraud or collusion, or that matters of defence, which he might have used, were not employed on the trial. *Ib. Ib.*

5. But when he has been cited in warranty, the judgment against his vendee, is conclusive against him. Ib. Ib.

6. The action of warranty of the vendor is not transferred by his sale, without a stipulation to that effect. Vannorght vs. Foreman and al. i. n. s. 352.

- 7. Warranty is of the nature, not of the essence of a contract of sale. Bayon vs. Vavasseur, x. 61.
- 8. A vendee is not bound to call in his warrantor to defend him when sued; but if he do not, the latter may shew when sued, that he had means of defence which would have proven successful if he had been called upon by his vendee to defend his title. Sterling vs. Fusilier, vii. 442. Fleming and al. vs. Lockart, x. 399.
- 9. If a vendor be brought in by his vendee to defend his title, the judgment on such a suit does not bind him as to the amount of damages which he may afterwards demand from his vendor. *Maurin* vs. *Toustin*, vi. 496.
- 10. If a slave be sold as bon domestique, cocher, et briquetier, and he be proven to be a good servant, and a coachman, and brickmaker, this will suffice. Duncan vs. Cevallo's Ex'rs, iv. 571.
- 11. Warranty does not extend to a tortious disturbance. Mayor and Aldermen, &c. vs. Clark, iii. 596.
- 12. A deft. may cite, and have judgment against his vendor on the warranty. Aubert vs. Martineau, ii. 329.
- 13. A workman who undertakes a work on a plan furnished by himself, tacitly warrants that it is feasible. Orleans Navigation Co. vs. Boutte's Ex'rs, ii. 84.

Vide AGENT, 14. RESPONSIBILITY. BILLS OF EXCHANGE AND PROMISSORY NOTES, 111, 114. TORT. COURTS OF PROBATE, 5. SALE.

WIDOW.

1. When a widow accepts the community, she is liable

to be sued in a district court. Flood and al. vs. Shaumburgh, iii. n. s. 622.

2. When she has taken an active part in the community, or has made no inventory, she cannot renounce.—

Ibid. Ibid.

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WILL.

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by his variation in defend his table. Stocking is

1. When it appears from a will, that it was read to the testator in the presence of witnesses, it matters not what expressions were used to express that fact. Forstall and al. vs. Forstall, iii. n. s. 367. Seghers, Attorney for Absent Heirs vs. Antheman, Ex'r of Andre, f. w. c. i. n. s. 73.

2. The Spanish laws did not require that all the formalities necessary to give effect to a will, should appear on the face of it. Bonne and al. vs. Powers, iii. n. s. 458.

3. The validity of a will, not presented to a probate judge, cannot be inquired into in a district court. Bradford's Curator vs. Beauchamp, iii. n. s. 473.

4. Till such a will be presented, it cannot authorize prescription. *Ibid. Ibid.*

5. When the notary states that he wrote the will, "without turning aside to other acts," it is unnecessary to add, "without interruption." Seghers, Attorney for Absent Heirs vs. Antheman, Ex'r of Andre, f. w. c. i. n. s. 73.

6. If it be witnessed at several intervals of time, and there be alterations made in the testament between the first and last attestation, it will be void. Crane and al. vs. Marshal, i. n. s. 577.

7. Although three witnesses only could be had, when and where a will was made, if more could have been had by going some distance, and if there were no necessity of making the will at the time, the requisites of the law will not have been complied with. Fruge and al. vs. La Case and al. i. n. s. 488.

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- 8. It is sufficient for the validity of a nuncupative will under private signature, that it be passed in the presence of three witnesses, residing where the testament is received, or four others. Fleckner vs. Nelder, xii. 503.
- 9. A will may be proven by a single witness. Bouthemy vs. Dreux and al. xii. 639.
- 10. A witness may contradict enunciations in a will.—

 Ibid. Ibid. Marie vs. Avart's Heirs, x. 25. Knight vs. Smith, iii. 156.
- 11. The names of the witnesses need not be inserted in the body of a nuncupative will, under private signature. Bouthemy vs. Dreux and al. xii. 639.
- 12. Whether all the witnesses should sign at the same time? *Ibid. Ibid.*
- 13. The presentation of the will to the witnesses need not be manual. *Ibid. Ibid.*
- 14. The attestation of subscribing witnesses does not mar an olographic will. Heirs of Andrews vs. Ex'rs of Andrews, xii. 713. Broutin and al. vs. Vassant, v. 169.
- 15. A will clothed with all the formalities required by law, can be avoided only by attacking its genuineness. Hayes vs. Cuny, ix. 87.
- 16. A superscription is not of the essence of an olographic will. Broutin and al. vs. Vassant, v. 169.
 - 17. A testator may dispose of part of his estate by an

universal, and the rest by a particular title. Gardiner and al. vs. Harbour and al. v. 408.

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- 10 18. A will must be written by the notary himself. Knight vs. Smith, iii. 156.
- 19. Formalities required in a will, are matters of strict law. Pizerot and al. vs. Meuillon's Heirs, iii. 97.
- 20. If a will be not void, but voidable, no one but the heir at law can take advantage of the defect. Bonne and al. vs. Powers, iii. n. s. 458.
- 21. General expressions in a will are to be restrained by those which precede and follow them. Lartigue and al. vs. Duhamel's Ex'r, iv. n. s. 664.
- 22. So a bequest of "one thousand dollars, my moveable estate, plate and jewels," will not entitle the legatee to all the moveable or personal estate. *Ibid. Ibid.*

Vide Executor. Administrator. Heir. Prescription, 25. Substitution.

WITNESS.

- I. Who are competent Witnesses.
- II. Incompetency of Witnesses, and for what cause they may be recused.
- III. Incompetency from infamy of character.
- IV. Objections to Witnesses.
- V. Examination of Witnesses.
- VI. Compensation of Witnesses.
- VII. Witnesses generally.

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I. WHO ARE COMPETENT WITNESSES.

1. When a witness has no interest in the event of the

suit, but some in the question, the objection goes only to his credibility. Broussard vs. Duhamel, iii. n. s. 11.

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- 2. One who is liable for costs, but has the means of securing himself, is competent. Collins and al. vs. M'Crimmen, iii. n. s. 166.
- 3. The vendee may offer the notary, who drew the bill of sale, to prove that the vendor was in possession of an act under which he claimed title to the slave sold, and which was referred to in the bill of sale. Carian vs. Rieffel, ii. n. s. 619.
- 4. A witness is not incompetent, because he is in the service of one of the parties. Lafon's Ex'rx vs. Gravier and al. i. n. s. 243. Finlay and al. vs. Kirkland, ix. 463.
- 5. Nor because he may receive some benefit from the trial. Lafon's Ex'rx vs. Gravier and al. i. n. s. 243.
- 6. A vendor who has obtained a release from his vendee, is a competent witness. Vannorght vs. Foreman and al. i. n. s. 352.
- 7. The maker of a deed is the best witness to prove its execution. Robertson vs. Lucas, i. n. s. 187.
- 8. The apparent or reputed owner is a good witness between the insurer and the insured. Barry vs. Louisiana Ins. Co. xii. 493.
- 9. A co-trespasser is a good witness for another. Curtis vs. Graham, xii. 289. Harang vs. Dauphin, iv. 27.
- 10. When there are co-defts. and there be slight or no evidence against one of them, he may be sworn as a witness for the others. Curtis vs. Graham, xii. 289.
 - 11. A fortiori, when he has not been cited. Ibid. Ibid.
- 12. A father-in-law is not incapacitated from being a witness. Bernard vs. Vignaud, x. 482.

- 13. The members of a police jury may be witnesses of a suit brought by them. Police Jury vs. M'Donogh, vii. 8.
- 14. One who testifies against his own interest, is not liable to any objection. Peytavin vs. Hopkins, vi. 256. White and al. vs. Holsten and al. iv. 471. Rochelle and Shiff vs. Musson, iii. 73. M'Micken vs. Fair, iv. n. s. 172.
- 15. A creditor of a person for whose debt the suit is brought, is not an incompetent witness. Hewes vs. Lauve, vi. 502.
- 16. An agent entitled to a commission, may be a witness for his principal. Caune vs. Sagory, iv. 81.
- 17. An agent is a competent witness. Robertson vs. Nott, ii. n. s. 122, Pratt vs. Flowers, Ibid. 333.
- 18. Concubinage goes only to the credibility of a witness. Meunier vs. Couet, ii. 56.
- 19. A person who bespoke the work in behalf of the deft. is competent. Trouard vs. Beauregard, i. 80.
- 20. An apparent endorser of a note may be admitted to prove the forgery of his name. Territory vs. Barran, i. 208.
- 21. When the event of a suit is to determine to whom the debtor is to pay, he may be a witness. Abat vs. Doliole, iii. 657.
- 22. Attorneys in fact and at law, are admissible witnesses. Duplantier vs. Randolph, iii. 194. Menendez vs. Syndics of Larionda, Ibid. 256.
- 23. A parish judge who receives a sheriff's bond, is in case of loss a good witness to prove its contents. Villere vs. Armstrong and al. iv. n. s. 21.
- 24. The mate is a competent witness for the captain in a suit for negligence. Jourdan vs. White, iv. n. s. 335.
- 25. In a suit against a part owner of a steam boat, another part owner is a competent witness for the deft. *Ibid.*

26. A partner who has sold out to his co-partners any debts that may be due to the firm, and on the trial receives a release from his partners, is a competent witness to prove a debt due to the firm. Meriam and al. vs. Worsham and al. iv. n. s. 198.

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II. INCOMPETENCY OF WITNESSES, AND FOR WHAT CAUSE THEY MAY BE RECUSED.

CHAILY

27. A district judge cannot be examined as a witness in his own court. Ross and al. vs. Buhler and al. ii. n. s. 312.

28. When, however, a jury tries the facts, he can be examined. *Ibid. Ibid.*

29. When the interest of a witness appears by the instrument on which the suit is brought, his declaration cannot destroy his incompetency. Evans and al. vs. Gray and al. i. n. s. 709.

30. A stockholder cannot be a witness for the corporation. Lynch vs Postlethwaite, vii. 69.

31. A ceding debtor cannot be used as a witness by his syndics. Clay's Syndics vs. Kirkland, iv. 405.

32. A person entrusted with goods, cannot be a witness against a trespasser. Pleasants vs. Ross, ii. 114.

33. A witness does not become competent by depositing a sum of money sufficient to pay the costs to which he may be liable. Meeker's Assignees vs. Williamson and al. Syndics, viii. 365.

34. An attorney cannot become a legal witness in a cause, by striking off his name from the record. Gould vs. Bridgers, iii. n. s. 692. English vs. Latham, Ibid. 88.

35. One who may be directly a winner or a loser by the event of a suit, cannot testify. Pratt vs. Flower and al. ii. n. s. 333.

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36. A witness is only disqualified, when he has an interest in the event of the suit. Marburg vs. Canfield, iv. n. s. 539.

III. INCOMPETENCY FROM INFAMY OF CHARACTER.

37. The criminality of a witness cannot be proved otherwise than by the record of his conviction. Castellano vs. Peillon, ii. n. s. 466.

IV. OBJECTIONS TO WITNESSES.

38. It is the duty of the party objecting to the introduction of a witness, on the ground that he has an interest in the cause, to state what the nature of that interest is.—

Bernard and al. vs. Vignaud, x. 637.

V. EXAMINATION OF WITNESSES.

- 39. A witness may be asked whether the deft. was or was not in the habit of paying for goods taken up by his children before the time when those, the payment of which is claimed, were charged. Finlay and al. vs. Kirkland, ix. 463.
- 40. A witness is not protected from answering a question on the ground that he may thereby render himself liable in a civil suit. *Planters' Bank* vs. *George*, vi. 670.
- 41. A witness who has been examined by one of the parties, may be re-examined by the other. Bayon vs. Mollere and al. iv. 621.
- 42. On a cross-examination, a witness may be questioned as to new facts. Durnford vs. Clark, i. 202.
 - 43. If a party give a part of a conversation in evidence,

the other has a right to draw the whole of it out on the cross-examination. Harrison vs. Laverty, viii. 213.

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VI. COMPENSATION OF WITNESSES.

- 44. A witness, a stranger, bound in a reconveyance and compelled to stay, is entitled to compensation therefor; but he is not in such case, entitled to milage. MFall's Case, ii. 171.
- 45. But a witness losing his passage, by being recognised to give evidence, is not entitled to any compensation therefor. Shaddock's Case, ii. 207.

VII. WITNESSES GENERALLY.

- 46. Whether two witnesses be necessary to prove the loss of a title, the subject of which exceeds five hundred dollars? Vannorght vs. Foreman and al. i. n. s. 352.
- 47. It is no objection to the reading of an instrument, that the witness who proves the party's hand-writing (his mother's) was young at the time, that she has been dead long since, and that he does not read hand-writing. Wyche vs. Wyche, x. 408.
- 48. A report subscribed by a witness may be read to weaken his testimony, by shewing a discrepancy between what he signed, and what he swore to. Lynch vs. Postlethwaite, vii. 69.
- 49. A witness who deposeth to his belief, without giving his grounds for it, makes no proofs. Watson and al. vs. M'Allister, vii. 368.
- 50. A witness declaring himself interested, may be required to say how. Rochelle and Shiff vs. Musson, iii, 73.
- 51. A witness not allowed to stultify himself. Yocum vs. Roy, iii. 409.

52. The subscribing witness to an instrument must be produced or accounted for. Labarthe vs. Gerbeau, i. n. s. 486.

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- 53. His testimony is not required, if he reside out of the state. Villere vs. Armstrong and al. iv. n. s. 21.
- 54. If a witness be dead or absent, his testimony in another suit between the same parties, may be used. Hennen vs. Monro, iv. n. s. 449.
- 55. It is in the discretion of the judges a quo, to permit a witness to be sworn after the parties have closed their evidence, and the deft's counsel opened his defence by reading his answer to the jury. Richardson vs. Debuys and al. iv. n. s. 127.

Vide AGENT. EVIDENCE. BILLS OF EXCHANGE AND PROMISSORY NOTES, 5. DEPOSITION, 8. IDENTITY. JURY, 10. SEPARATION FROM BED AND BOARD. SURETY.

WORK BY THE JOB.

1. Materials furnished and labour will be lost, if the thing be destroyed before work is completed, when it is to be done for a fixed price. Seguin vs. Debon, iii. 6.

WRITTEN CONTRACT.

his grounds for he make no process Decay of the

1. When a contract is to be written, any party may re-

Roy, iii 4 9.

cant before it is signed by all the parties. Villere and al. vs. Brognier, iii. 326.

2. A written contract may be resorted to, though an account, by which less than was therein stipulated, was presented. *Brand* vs. *Livaudais and al.* iii. 608.

3. Whether an instrument of writing, which declares that the property was sold to secure the vendee against certain obligations, be a mortgage or a sale? Smoot and al. vs. Russell, i. n. s. 522.

Vide CONTRACT. NOTARIAL ACTS.

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WRITING-INSTRUMENT OF.

1. If one be bound to give an instrument of writing, or bill of sale, he will also be bound to subscribe and seal it. if a seal be necessary. Caire vs. Bank of Louisiana, iv. n. s. 295.

can before it e igued by all the parties. Filtere and al. :

2. A written contract may be resorted to though an account by which tess than was therein significant, was presented. Broad vs. Lirculais and at iii. 606.

that the property was sold to secure the vender against certify able to a nontrigorous sale? Smoot and also the the secure is sale?

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ERRATA.

4, Point 2, first line, for "requires," read acquires.

12, In reference to bills of exchange, &c. for point "77," read 80. do. do. do. "56" read 58. do. 19, Point 14, for "ii. n. s. 708," read ii. n. s. 520. 47, for "iii. n. s." read ii. n. s. 48. 60. 97. 9, for "Gray and al." read Grayier and al.
53, for "Cox," read Coe. 131 136. 133, for "x. 419," read x 436y 144. 3, for "m. n. s. 206," read lii. n. s. 369. 40, for "Terry and al." read Torry and al. 11, for "xi. 588," read xi. 558. 167. 183. 206 235 2, at the top of the page, for "Barrow," read Barron. 1, under head of Possession, for "Packwood vs. Richardson," read Richardson as Packwood. (This error also occurs in Martin.) Page 280, same error.

53, for "Langlish," read Langlini. 255. 111, for "v. 561," read v. 361 264, 159, for "Lieto," real Neto. which 71. 275 26, for "v. 97," read v. 197. 13, for "iii. n. s." read ii, n. s. 1, for "Nuley" read Neely. 18, for "iii, n. s. 616," read iii. 613. 25, for "392," read 292. 1, at the bottom, after "Tilghman vs. Dias," add xii

1, at the top, for "vii. 208," read viii. 208.

